Supreme Court, U.S.
FILED

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No.

In The Supreme Court of the United States

Paul A. Reilly,

Petitioner(s)

v.

Alvin Weiss, Philip M. Freedman, Richard C. Camp, Arlene Albino, Toby Kleinman, Ilene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, James Wulach, and Theresa M. Pagano

Respondent(s)

On Petition for Writ of Certiorari
to the Third Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Former Third Circuit Chief Judge Becker's testimony before the Commission on Structural Alternatives for the Federal Courts of Appeals shows a structured bias against pro se litigants and cases whereby judicial function(s) are performed by duly appointed appellate judges in counseled cases but are "abdicated" to staff attorneys in pro se cases. His reasons are statistics show pro se cases have no merit and / or are handwritten and / or are "gibberish" and thus must be accorded less weight. The appellate panel in this matter merely, but surprisingly, denies that they distinguish pro se litigants and cases in such manner. The Circuit, denying en banc review, is silent.

Judge Becker's candor is exactly related to the issues. Counseled cases are disposed of by judges to prevent "cases from slipping through the cracks." Such slippage in the search for the truth has a direct bearing as the District Judge twice imposed restraints on plaintiff's right of access to the court without notice or hearing prior to judgment. Her Honor subsequently called for the filing of a brief on a "Motion to Vacate". The merits have never been addressed but the order entered disposed of the matter as a motion for rehearing.

(1) Whether the Third Circuit is competent to decide the issues presented because said judges have "abdicated their judicial duties" to staff attorneys'; and whether the three judge panel's denial of the facts showing staff attorneys perform judicial functions and the en banc panel's knowledge they are likely to be material witnesses concerning said matters renders the Circuit incompetent to decide the issues.

(2) Whether restraints on access to the court, first without notice and hearing, and later by silently changing the motion to vacate into a motion to rehear violates the right to adequate notice and opportunity to be heard.

(3) Whether the Circuit and District Court judgments are void.

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CITATION OF OPINIONS AND ORDERS

The opinion of the court of appeals, dated, March 10, 2004, is unreported. I V 5-11. Motion for Rehearing with Suggestion for Rehearing En Banc was denied in an order dated July 19, 2004. 3 I V 86-87. The opinions and orders of the district court filed from December 26, 2001 and July 18, 2002, (specific references are made below) are also unreported. I V 12-45.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 2004. A petition for rehearing with suggestion for rehearing en banc was denied on July 19, 2004.

The District Court has jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343 . It is on remand from the Third Circuit Court of Appeals. I V 16.

The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The Plaintiff respectfully petitions for a writ of certiorari to review the judgment of the United State Court of Appeals for the Third Circuit in this case.

1. On November 13, 2001 the Clerk of the District Court of New Jersey requested the defendants' attorneys each submit a form of order on mandate, noting the order of the district court is affirmed. I V 16-27. The submissions all stated the Complaint was dismissed as to the particular defendants with prejudice. I V 28-37. The circuit order however dismissed without prejudice to the minor. I V 82. On November 26, 2001 the district court judge was informed of the discrepancy, I V 48, and Plaintiff subsequently submitted a form of order. I V 44-51. Between November 30, 2001 and March 6, 2002 the district judge entered orders on mandate dismissing the complaint with prejudice and did not mention it was dismissed without prejudice to the minor. I V 28-37. Furthermore, without notice or opportunity to be heard, the district judge issued a directive that "ordered the Clerk of the Court not to accept further motions regarding this matter; ***. I V 15. Appeal was taken January 2, 2002. I V 12.

2. In a sua sponte order entered April 25, 2002 the district judge issued far reaching restraints on Plaintiff's access to the courts and again the order was entered without notice or opportunity to be heard prior to entry. I V 39-42. This order was appealed May 1, 2002. I V 12.

3. On May 14, 2002 Plaintiff wrote the district judge noting the April 29, 2002 motion to vacate and stay the April 15, 2002 had not been docketed. I V 52-53. The Letter went on to note the circuit had had been informed. Id. The district judge responded by stating she had received the aforesaid letter and was (1) construing it as a "motion to vacate" and (2) that a brief may be filed in support of the motion. I V 50. The brief was "received" on May 16, 2002,

but never entered on the docket. I V 56. The brief argued the restraints were void (1) for lack of notice and opportunity to be heard and (2) the procedure offered the average person as judge the possible temptation not to hold the balance nice, clear and true. I V 56-70 .

4. On July 15, 2002 the district judge entered an order which treated the motion to vacate as a motion for reconsideration and consequently affirmed the April 11, 2002 order. I V 44. Appeal was taken August 14, 2002. I V 43.

5. On September 5, 2002 a motion for disqualification and to correct the record was filed in the district court, I V 70 – 78, and the district court was asked to dispose of said motion on September 27, 2002. When no answer was forthcoming the circuit court was asked to accept an appeal from the denial of all post judgment motions and / or for the exercise of its supervisory power to dispose of all pending matters. I V 46.

6. On March 10, 2002 the circuit court "ordered and adjudged" that the district court orders be modified, consistent with its opinion. I V 5-11.

7. The court held that Plaintiff's motion to disqualify the three judge panel was denied. The per curiam opinion found the bases of the motion to be "that Third Circuit judges have abdicated their responsibilities in pro se to staff attorneys [and] [h]is allegation is not true – the judges of this court personally read and consider each brief and motion filed in cases on which they preside. Thus, they find no basis under 28 U.S.C. § 455 for recusal and no basis for disqualification of staff attorneys.

8. The circuit also held the lack of notice and opportunity to be heard in the district court prior to the entry of judgment was "cured" by "Reilly's letter to, Judge Hochberg's letter to Reilly, Reilly's brief. Although the May 2, 2000 authorization of a "motion to vacate", I V 50, may fulfill the district "[c]ourt's desire to give adequate notice" I V 9, the Circuit panel offers no foundation in fact or law that "the previous lack of notice * * * was cured, i.e. becomes adequate notice, by providing the plaintiff with the requisite opportunity to be heard in opposition to and reconsideration of the April 11, 2002" Id.

9. It was further held that the "threat to sue the judicial officers who rendered decisions against him in federal court * * * do not * * * standing alone * * * warrant [] the entry of an order barring further filings. IV 9.

10. The circuit panel did however state that given the context of the order, the protracted nature of the proceedings, and the numerous meritless (as opposed to frivolous) filings, the court was justified in entering some sort of restraints I V 9.

11. The panel concluded the district judge's order was overbroad and restrained "[a]ny claim against any defendant which can be traced back to this litigation is controlled by this order." I V 10

12. Accordingly, plaintiff is restrained from filing any new case, proceeding, motion other litigation document in state or federal courts dealing with the issues resolved in Reilly v. Weiss, D.N.J. Civ. No. 97-cv-09883, without specific written permission of the district Court." I V 10

REASONS FOR GRANTING THE PETITION

The question submitted to this court concerns the competency of lower tribunals who have presided in this matter and whether they have acted beyond the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. This is, for the following reasons, a substantial question requiring this Court's attention.

1. This Court has long said:

> "[I]f the record discloses a controversy of which the court cannot properly take cognizance, its duty is to proceed no further and to dismiss the suit; and its failure or refusal to do what, under the law applicable to the facts proved, it ought to do, is an error which this court, upon its own motion, will correct, when the case is brought here for review. The rule is inflexible and without exception * * * the statute does not prescribe any particular mode in which such fact may be brought to the attention of the court * * * However done, it should be upon due notice to the parties to be affected by the dismissal." Morris v. Gilmer, 125 U.S. 315, 325-326 (1889).

> "If the record does not affirmatively show jurisdiction in the circuit court, we must, upon our own motion, so declare, and make such order as will prevent that court from exercising an authority not conferred upon it by statute." State of Minnesota v. Northern Securities Co., 194 U.S. 48, 62 (1904).

Accordingly, this court must and has addressed the controversies of whether a tribunal is properly constituted. When an appellate court is not properly constituted it is no court at all. Nguyen v. United

States, 539 U.S. 69 (2003) (Court of appeals consisting of two Article III judges and one Article IV judge does not have the authority to decide petitioner's appeal). So too, "where the question is not merely an error committed by the circuit court of appeals in failing to decide the merits, but an error resulting from the fact that the circuit court of appeals which passed upon the case was virtually no court at all, because not organized in conformity to law." Wm. Cramp Sons v. Curtis Turbine Co., 228 U.S. 645, 651-652 (1913) (An appellate court is improperly constituted for the reason that a district court judge who enters a pro forma decree below is disqualified from participating in the appellate review of that decree.).

Disqualify means to debar legally (citation omitted). * * * That is synonymous with lack of legal capacity, i.e. with inability to serve." Arnold v. Eastern Air Lines, Inc., 712 F.2d 899, 904 (4th Cir. 1983), cert. den. 464 U.S. 1040 (1984) citing 28 U.S.C. § 46(b) and 28 U.S.C. § 47. A court that is incompetent by reason of bias to adjudicate the issues pending before it is not only an extraordinary circumstance in the sense of presenting a highly unusual factual situation, but an extraordinary circumstance causing great, immediate and irreparable harm. Kugler v. Helfant, 421 U.S. 117, 124-125 & n.4 (1975) (citations omitted). Thus when a justice, judge or magistrate is disqualified pursuant to 28 U.S.C. § 455 the court is not properly constituted because "virtually every court of appeals has recognized" that disqualified "judge's do not adjudicate cases that they have no statutory power to hear." Alexander v. Primerica Holdings, Inc., 10 F.3d 155, 163 (3rd Cir. 1993) quoting In Re School Asbestos Litigation, 977 F.2d 764, 778 (listing cases) (3rd Cir. 1992).

This Court has long been sensitive to the inherent dangers arising from "delegating to staff assistants more and more work that we once expected judges to perform." Jackson v. Virginia, 443 U.S. 307, 337 & n. 10 (1979) (Stevens, J., dissenting). Indeed, certain structures are candidly frowned upon:

> "It is one thing to do the work yourself, and it is another thing to simply approve the recommendation of

> another person who has done the work. * * * I would feel entirely different about a system that assigned the preparation of "bench memos" - memoranda that summarize the contention of the parties and recommend a particular result in an argued case - to one law clerk in a large pool of clerks." Rehnquist, William H., The Supreme Court (Revised and Updated) First Vantage Books Edition, NYC, 2002, p. 235.

Such a structure is in place in the Third Circuit Court of Appeals and that structure renders said tribunal incompetent to adjudge the issues before it. The facts showing that the Third Circuit Court of Appeals is not competent are (1) Judge Becker's testimony to the Commission on Structural Alternatives for the Federal Courts of Appeals and (2) certain Circuit Judges' admission that they have been or the Circuit Justices are likely to be material witnesses in the proceeding.

First, when Judge Becker gave testimony, as Chief Judge of the Circuit, to the Commission on Structural Alternatives for the Federal Court of Appeals, his voluntary and self-acknowledged purpose was to provide a description of how the Third Circuit does its work. "I would like to begin with a brief description of how appellate judges do their work." 145 T 12-19. (Public Hearing, Thursday, April 16, 1998, New York, New York, Commission on Structural Alternatives for the Federal Courts Of Appeals (Gross, Neil R., Court Reporters and Transcribers, 1323 Road Island Ave., N. W., Washington, D.C. 20005-3701) ("page no. Transcript, transcript line no.")).

He went on to testify that counseled cases are treated in accord with the demands of an Article III Tribunal. In counseled cases judges "get the briefs and the motion papers or what have you and you read them." 146 T 16-18. "[I]f you have someone else read the briefs and tell you what is in them * * * that would be, in my view, an abdication of our duties." 146-147 T 21-2. "The most critically important duty of federal appellate judges, that is, to listen and read the briefs and read the papers" cannot be delegated. 148 T 11-20.

Moreover, according to Judge Becker, relying heavily on law clerk drafts of opinions in counseled cases cannot be done because while" appellate commissioners and appellate magistrates and staff attorneys are capable people * * * [t]hey are not Article III judges. And if you miss, things will between the cracks. If you miss 2 or 3 or 4 percent cases, that is in my view a very serious matter." 150 T 11-17. Towards this end "it is the duty of every circuit judge to contribute to keeping up the consistency and coherency of the Circuit law." 146 T 12 - 15. For these reasons and facts "[w]e don't do that in the Third Circuit. We do not use staff - - staff attorneys never look at a counseling case in the 3rd Circuit. They do pro se cases * * *. "147 T 9-12. In contrast to that of counseled cases, staff attorneys" do pro se cases" because "you have to discount them and give them a much lower weight" 167 T 2-5. Pro se cases are disregarded because the judges "really need an interpreter * * * they are written in long hand and sometimes it is gibberish * * * "the vast majority of them, the statistics show, really have no merit at all." 147 T 15-20.

"[S]taff attorneys perform a very important role in presenting them to us in an efficient way so that we can read them." 147 T 20-22. The way that staff attorneys present the pro se case is by the" [p] reparation of memoranda of law and fact and a recommendation as to disposition * * *." 3d Cir. lOP 13.2(b). However, it is the "duty of every judge to contribute to keeping up the consistency and coherency of the Circuit law * * *." 146 T 12-15. And, by being a master of the circuit law "I don't mean having a staff attorney or law clerk look it up when the occasion occurs. 157 - 158 T 20-1. In so far as responsibility for the maintenance of the consistency and coherency of Circuit law, I don't see how you can delegate that. * * * There is no substitute for a judge having in his or her head knowledge of the law of his or her circuit * * *." 148-149 T 21-11. Thus, while "the most critically important duty of appellate judges, that is, to listen and read the briefs and read the papers" cannot be delegated in counseled cases, 148 T 17-19, pro se litigants find that "critically important function" is abandoned to the staff attorneys.

So too, the judges cannot "rely more heavily on law clerk drafts of opinions * * * because the critically important thing in terms of

this delegation is while appellate commissioners and appellate magistrates and staff attorneys are capable people * * * [t]hey are not Article III judges." 150 T 10-15. Yet the judges also delegate this "critically important" function to staff attorneys, who are mysteriously somehow better qualified as "interpreter[s]" of pro se submissions and "gibberish", and those interpretations are presented to the judges in memorandums of law and fact and recommendations for disposition so that the judges' may understand them. But just as Article III is of no moment in pro se cases, the search for the truth is also of no moment because the Article III judges' performance of these duties is, at best, necessary to prevent counseled "cases from slipping through the cracks." 150 T 14-17. This is not necessary in pro se cases because in disposing of pro se cases, as opposed to counseled cases, "you have to discount them and give them a much lower weight," 167 T 2-5, they "really need an interpreter * * * they are written in long hand and sometimes it is gibberish * * *" and " the vast majority of them, the statistics show, really have no merit at all." 147 T 15-17.

Second, the March 10, 2004 per curiam opinion of judges Roth, Ambro and Smith shows that the Circuit Judges have been or are material witnesses in the proceeding. It reads in relevant part:

> "To the extent it is construed as a motion to disqualify all circuit judges and disqualify staff attorneys, is denied. Reilly bases his motion on an allegation that Third Circuit judges have abdicated their responsibilities in pro se cases to staff attorneys. His allegation is not true — the judges of this court personally read and consider each brief and motion filed in cases on which they preside." I V 11, n.4.

It is axiomatic that "[a] judge cannot be a witness in his own cause ('Judex non potest esse testis in propri caus')". Bouvier's Law Dictionary, 1856 citing 4 Co. Inst. 279. From 1821 to

1974, the content of 28 U.S.C. § 455 and its predecessor provide:

> "Any justice of Judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or any other proceeding therein." Lilieberg v. Health Services Acquisition Corp., 486 US 847, 858 n.7 (1988); Liteky v. United States, 114 S. Ct. 1147, 1153 (1994).

The Congress expressly requires that justice, judge or magistrate be disqualified in certain circumstances. 28 U.S.C. § 455. Particularly,

> "[a]ny justice, judge or magistrate shall disqualify himself in any proceeding * * * [w]here he has served in government employment and in such capacity participated as * * * [a] material witness concerning the proceeding * * *; 28 U.S.C. § 455 (b) (3), or "[i]s to the judge's knowledge likely to be a material witness in the proceeding. 28 U.S.C. § 455 (b) (5) (iv).

The Federal Rules of Evidence supports this conclusion. Rule 605 reads:

> "The judge presiding at the trial may not testify in that trial as a witness. No objection need be made to preserve the point." Fed. R. Evid. 605.

Furthermore, disqualification pursuant to statute is mandatory and may not be waived. So too, no justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated under subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification. 28 U.S.C. § 455(e).

The policy reason for this prohibition is not hard to understand.

> "To commit to the judge a decision upon the truth of the facts gives chance for the evil against which the section is directed. The remedy by appeal is inadequate. It comes after the trial and if prejudice exists it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient. Berger v. United States, 255 U.S. 22, 36 (1921)."

> The rule provides an "automatic" objection. To require an actual objection would confront the opponent with a choice between not objecting, with the result of allowing the testimony, and objecting, with the probable result of excluding the testimony but at the price of continuing the trial before a judge likely to feel that his integrity had been attacked by the objector." Fed. R. Evid. 605, Notes of Advisory Committee on Rules.

> "The comprehensive and inflexible character of the probation was intended to prevent resort to consent of the party or parties as a means of qualifying a judge to participate in the decision of a case in the

> circuit court of appeals, when without such consent, because of the prohibition of the statute, he would be disqualified from so doing, - a purpose whose public policy is not difficult to understand. Wm. Cramp Sons v. Curtis Turbine Co., Supra, 228 U.S. at 650.

"While the district judge may personally know this allegation is false, such knowledge is not a proper basis for judicial notice." United States v. Lewis, 833 F.2d 1380, 1385-86 (9th Cir. 1987); United States v. Sorrells. 714 F.2d 1522. 1527 n.6 (11th Cir. 1983); Virgin Islands v. Gereau. 523 F.2d 140, 147-48 (3d Cir. 1975).

> "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b). The confidential, internal workings of the federal judiciary do not seem to fall into either category: they are inherently outside the realm of general knowledge and there are no ready sources for incontestable confirmation of the facts in question here. Contestability and disputation are critical considerations here. We do not mean to suggest that a court could never take judicial notice of its own internal procedures. The problem is that the procedures in question here entail the central allegation of impropriety in the case, and the judicial officers accused of that impropriety would be both the conduit and source of the confidential information vindicating those procedures." Switzer v. Coan, 261 F.3d 985, 989 (10th Cir. 2001).

"In view of the mandate of 28 U.S.C. § 455 that a judge disqualify himself in "any case in which he ... is or has been a material witness," the likelihood that the presiding judge in a federal court might be called to testify in the trial over which he is presiding is slight. Nevertheless the possibility is not totally eliminated.

The solution here presented is a broad rule of incompetency, rather than such alternatives as incompetency only as to material matters, leaving the matter to the discretion of the judge, or recognizing no incompetency. The choice is the result of inability to evolve satisfactory answers to questions which arise when the judge abandons the bench for the witness stand. Who rules on objections? Who compels him to answer? Can he rule impartially on the weight and admissibility of his own testimony? Can he be impeached or cross-examined effectively? Can he, in a jury trial, avoid conferring his seal of approval on one side in the eyes of the jury? Can he, in a bench trial, avoid an involvement destructive of impartiality? The rule of general incompetency has substantial support. See Report of the Special Committee on the Propriety of Judges Appearing as Witnesses, 36 A.B.A.J. 630 (1950); cases collected in Annot. 157 A.L.R. 311; McCormick § 68, p. 147; Uniform Rule 42; California Evidence Code § 703; Kansas Code of Civil Procedure § 60-442; New Jersey Evidence Rule 42. Cf. 6 Wigmore § 1909, which advocates leaving the matter to the discretion of the judge, and statutes to that effect collected in Annot. 157 A.L.R. 311." Fed. R. Evid. 605, Notes of Advisory Committee on Rules.

Furthermore, at this stage of the proceedings, plaintiff's allegations must be accepted as true and construed in the light most favorable to plaintiff. Switzer, supra, 261 F.3d at (citations omitted). Conversely, assuming for the sake of argument that the judges' testimony were appropriate, the judges must do more than just rest upon mere allegations, general denials, or vague statements. Sladana v. Kmart Corp., 260 F.3d 228, 232 (3rd Cir. 2001)(citations omitted). But they do not. Opinion, p.6, n. 6 (His allegation is not true — the judges of this court personally read and consider each brief and motion filed in cases on which they preside.").

2. Just as the court must provide due notice to the parties to be affected when a court cannot properly take cognizance of a controversy, Morris, supra, 125 U.S. at 325-326, so too a tribunal cannot take action without meeting the requirements of notice and opportunity to be heard.

> "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be first notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" Fuentes v. Shevin, 407 U.S. 67, 80 (1994) (citations omitted).

This Court has also held that:

> "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of an action and afford them an opportunity to present their objections." Mullane v. Central Hanover Trust Co., 339 U.S. 206, 314 (1950). "[T]he root requirement of the Due Process Clause is

'that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest. '" Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542 (1985).

Fed. R. Civ. P. 65 (a & b) provide specific pre-deprivation procedures to be followed when issuing temporary, preliminary or permanent restraints. Since there was no pre--deprivation hearing due process is violated because "where a pre-deprivation hearing is available prior to final deprivation it must be provided regardless of the post-deprivation remedy." Zinermon v. Burch, 494 U.S. 113, 132 (1990). Furthermore, constitutionally inadequate notice renders the judgment void. U.S. v. One Toshiba Color Television, 213 F.3d 147, 156-157 (3rdCir. 2000).

The hearing must not only be at a meaningful time and in a meaningful manner, Goldberg v. Kelly, 397 U.S. 254, 268 (1970) (citations omitted), but must be tailored to the capacities and circumstances of those who are to be heard. Id. At 268-269. Adequate notice requires disclosure of all issues to be discussed and sufficient time to prepare. Yohn v. Love, 76 F.3d 508, 516 (3rd Cir.1996). The use of such measures against a pro se plaintiff should be approached with particular caution * * *. In Re Oliver, 682 F.2d 443, 445 & n.5 (3rd Cir. 1982). The district court must assume the burden to notify the party to be enjoined and to invite response. In Re Hartford Textile Co., 613 F.2d 388, 390 (2nd Cir. 1979), cert. den. 447 U.S. 907. Indeed, the district court must provide prior notice and an opportunity to oppose an order that enjoins the clerk of that court from accepting papers for filing before the order is instituted. In Re Oliver, 682 at 446; Gagliardi v. McWilliams, 834 F.2d 81, 83 (3rd Cir. 1987). Absent a full, fair, potentially effective opportunity to defend the right to a hearing is a barren one. Morgan v. United States, 304 U.S. 1, 18 (1938).

It is well settled a decree is to be construed with reference to the issues it was meant to decide. Mayor & Alderman of the City of Vicksburg v. Henson, 231 U.S. 259, 269 (1913). A motion to vacate is not a motion to reconsider because they serve different

purposes and produce different consequences. Herzog Contracting Corp. v. McGowen Corp., 976 F.2d 1062, 1065 (7th Cir. 1992). Rule 59(e) serves the purpose of reconsidering matters properly encompassed in a decision on the merits. Osterneck v. Ernest & Whinney, 49 U.S. 169, 174-177 (1989); White v. New Hampshire Dept. of Employment Security, 455 U.S. 445, 451-452 (1982). It questions the correctness of the judgment. New Castle County, 933 F.2d 1162, 1176 (3rd Cir. 1991).

A motion to vacate may be filed pursuant to Rule 59(e) and Rule 60(b). Forman v. Davis, 371 U.S. 178 (1962). But "vacate" has a particular meaning. Its usage means "to annul, to render an act void." Bouvier's Law Dictionary, 1856 Ed. To vacate a judgment "clears the path for future relitigation of the issues between the parties and eliminates a judgment." United States v. Munsingwear, Inc., 340 U.S. 36, 40 (1950). It means to "wipe[] the slate clean, not only rendering the decree sterile but also eviscerating any collateral effects and indeed casting a shadow on the past action taken under the decrees imprimatur * * *." Inmates of Suffolk County Jail, 129 F.3d at 622; Cody v. Hillard, 304 F.3d 767, 774 (8th Cir. 2002).

3. The aforesaid order~~s are~~ void. First, a Court order that is inconsistent with due process is void and relief is mandatory.

> "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court; by which is meant until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered." Old Wayne Mut. Life Ass'n. v. McDonough, 204 U.S. 8, 17 (1907) citing Galpin v. Page, 18 Wall. 365, 366 368.

"The judgments mentioned, given in the cases supposed, would not be merely erroneous, they would be absolutely void, because the court, in rendering them, would transcend the limits of its authority in those cases." Windsor v. McVeigh, 93 U.S. 274, 282 (1876); See also, Reynolds v. Stockton, 140 U.S... 254,268 (1891); Barnes v. Chicago, M. & St. P. R. Co. 122 U.S. 1, 14 (1887); United Switch & Signal Div., American Standard Inc. v. United Radio and Mac. Workers of America, Local 610, 900 F.2d 608, 612 (3rd Cir 1990); Eberhardt v. Integrated Design & Construction, Inc., 167 F.3d 861, 871 (4th Cir. 1999) quoting U.S. v. Schwartz, 976 F.2d 213, 217 (4th Cir. 1992); Antoine v. Atlas Turner, Inc., 66 F.3d 105, 106 (6th Cir. 1995 quoting In Re Edwards, 962 F.2d 641, 644 (7th Cir. 1992); Carter v. Fenner, 136 F.3d 1000, 1005 (5th Cir. 1998); In Re Center Wholesale Inc., 759 F.2d 1440, 1448 (9th Cir. 1985).

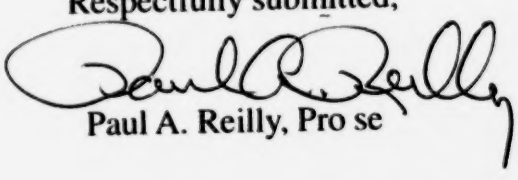
Second, a judgment based on a prior void judgment is also void. Orner v. Shalala, 30 F.3d 1307, 1310 (10th Cir. 1994) citing V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979); Antoine, Supra, 66 F.3d at 108 citing U.S. v. Indoor Cultivation Equip. From High Tec Indoor Garden Supply, 55 F.3d 1311, 1317 (7th Cir. 1995); Carter, 136 F.3d at 1005; Evans v. City of Chicago, 10 F.3d 474 (7th Cir. 1993); Michigan Sur. Co. v. Service Mach. Corp., 277 F.2d 531 (5th Cir. 1960).

CONCLUSION

For all of the foregoing reasons the petition of certiorari should be granted.

May 26, 2005

Respectfully submitted,



Paul A. Reilly, Pro se

Supreme Court, U.S.
FILED

041686 OCT 18 2004

OFFICE OF THE CLERK

No.

In The Supreme Court of the United States

Paul A. Reilly,

Petitioner(s)

v.

Alvin Weiss, Philip M. Freedman, Richard C. Camp, Arlene Albino, Toby Kleinman, Ilene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, James Wulach, and Theresa M. Pagano

Respondent(s)

On Petition for Writ of Certiorari
to the Third Circuit Court of Appeals

APPENDIX INCLUDING STATUTES AND TRANSCRIPTS

Paul A. Reilly, Pro Se
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 02-1382, 02-2821,02-3261 & 03-1402

PAUL A. REILLY, and on behalf of his minor son, Michael S. Reilly,

v.

ALVIN WEISS; PHILIP M. FREEDMAN; RICHARD C. CAMP; ARLENE ALBINO; TOBY KLEIMAN; ILENE MIKLUS; TIMOTHY WELLES; MATHIAS HAGOVSKY; DA YID BRODZINSKY; JAMES WULACH; THERESA M. PAGANO

Paul A. Reilly,
Appellant

On Appeal From the United States District Court For the District of New Jersey
(D.C. Civ. No. 97-CY-05883)
District Judge: Honorable Faith S. Hochberg

Submitted Under Third Circuit LAR 34.1 (a) November 18, 2003

Before: ROTH, AMBRO and SMITH, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a).

On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered January 8, 2002 be and the same is hereby affirmed. The orders entered April 16, 2002 and July 15, 2002 are hereby modified, consistent with this opinion. All of the above in accordance with the opinion of this court.

ATTEST:
s/Marcia M. Waldron
Clerk

Dated: March 10, 2004

UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 02-1382, 02-2821, 02-3261 & 03-1402

PAUL A. REILLY, and on behalf of his minor son, Michael S. Reilly,

v.

ALVIN WEISS; PHILIP M. FREEDMAN; RICHARD C. CAMP; ARLENE ALBINO; TOBY KLEIMAN; ILENE MIKLUS; TIMOTHY WELLES; MATHIAS HAGOVSKY; DAVID BRODZINSKY; JAMES WULACH; THERESA M. PAGANO

Paul A. Reilly,
Appellant

On Appeal From the United States District Court For the District of New Jersey
(D.C. Civ. No. 97-CV-05883) District Judge: Honorable Faith S. Hochberg

Submitted Under Third Circuit LAR 34.1 (a) November 18, 2003

Before: ROTH, AMBRO and SMITH, Circuit Judges

(Filed: March 10, 2004)
OPINION

PER CURIAM

Paul A. Reilly appeals from several orders entered by the United States District Court for the District of New Jersey. As we write for the parties, we will not review the background of this case in detail. In brief, Reilly filed a complaint in the District Court in 1997, alleging that his civil rights and those of his son Michael were violated in a custody dispute in state court. This Court affirmed the District Court's dismissal of Reilly's claims, but remanded with instructions to vacate the order as to Reilly's son. After remand, on September 26,2000, the District Court entered an order, which, inter alia, dismissed the complaint without prejudice to Michael Reilly to bring the claims in his own right upon reaching majority. The District Court denied Reilly's motion for reargument on February 9,2001, and this Court affirmed those orders on August 23, 2001. The subsequent rulings of the District Court form the basis for these consolidated appeals.

I. 02-1382

In November 2001, the District Court Clerk directed the defendants to draft an order on the mandate for submission to the Court. The defendants did so, and Reilly also filed a proposed form of order on the mandate. The Court entered five separate orders dismissing the complaint as to the various defendants. After two of the orders had been issued, Reilly filed a motion "to resolve pending matters concerning form of mandate." On January 8, 2002, the Court entered an order finding that the motion was moot, as the Court had already issued an order on mandate, and there was no error on mandate. The order also stated that it appeared that Reilly was "berating the court with repetitive

1. References to "Reilly" refer to Paul Reilly only unless otherwise specified.

motions concerning the exact same matter," that "the matter is meritless," and ordered that the Clerk "not accept further motions regarding this matter." Reilly appealed from this order, apparently arguing that the orders on mandate should have mentioned that the complaint was dismissed without prejudice to his son.

Although we understand Reilly's confusion, we agree with the District Court that there is no error in the orders entered on mandate. At the time this Court issued its mandate, the complaint had already been dismissed without prejudice as to Michael Reilly. See District Court's September 26,2000 order. Thus, the orders entered on mandate in late 2001 and early 2002 concerned this Court's mandate in appeal number 00-3634, in which Paul Reilly was the only appellant. Thus, there was no need to mention Michael Reilly in the orders.

As to Reilly's request to have the forms of order consolidated, district courts have broad discretion to control the sequence in which they hear matters on their calendars and to decide whether to consolidate the proceedings on motions. U.S. v. Western Elec. Co., Inc., 46 F.3d 1198, 1207-08 n.7 (D.C. Cir. 1995) (citing Landis v. North Am. Co., 299 U.S. 248, 254 (1936). We find that the District Court did not abuse its discretion in deciding to enter the orders separately.

II. 02-2821 and 02-3261

Reilly also appeals from an order entered April 16, 2002, restricting Reilly's court filings (Appeal No. 02-2821), and from an order entered July 15,2002, ordering that the April order remain in full force (Appeal No. 02-3261). The April order, entered by the Court on its own motion, states that Reilly "has pursued a path of vexatious litigation in this Court against the judges and others who ruled against him in a prior state court proceeding," and notes that Reilly had "threatened to sue the judicial officers who rendered decisions against him

in federal court." The order bars Reilly or anyone acting on his behalf from filing "any new case, proceeding, motion or other litigation document in this court or in the state courts of New Jersey without specific written order of this court." The order also informs the defendants that they need not respond to any of Reilly's filings, unless he has obtained prior written court permission to file the document and instructs the Clerk not to accept any new filings without prior written leave of the Court. The order further directs Reilly to attach the order to any subsequent filings in the District of New Jersey, any New Jersey state court, or any federal court and provides penalties for its violation. The order contains criteria for determining whether approval to file should be granted.

This Court reviews the issuance of an order barring future filings for an abuse of discretion. Abdul-Akbar v. Watson, 901 F.2d 329,331 (3d. Cir. 1990). Orders restricting the filing of documents from certain litigants are within the District Court's power under the All Writs Act. In re Oliver, 682 F.2d 443,445 (3d Cir. 1982). An order barring future filings is an extreme measure, however. This Court has held that the District Court must comply with certain requirements when issuing this type of injunctive order against pro se litigants: (I) such an order should only be entered in exigent circumstances, such as when a litigant continuously abuses the judicial process by filing meritless and repetitive actions; (2) the District Court must give notice to the litigant to show cause why the proposed injunctive relief should not issue; and (3) the scope of the injunctive order must be narrowly tailored to fit the particular circumstances of the case. Brow v. Farrelly, 994 F.2d 1027,1038 (3d Cir. 1993).

We turn to the notice requirement first. The District Court entered the April order without prior notice to Reilly. However, it appears that the lack of notice was rectified before the Court entered its July 15, 2002 order-Reilly includes in his Appendix at page 73 a May 2, 2002 letter from Judge

Hochberg noting that she would construe Reilly's April 29, 2002 letter as a motion to vacate the April 2002 order, and states that Reilly may file a brief on the matter within 14 days. Reilly also includes in his Appendix at page 76 his brief in support of his motion to vacate the April order, which is marked with the District Court's "RECEIVED" stamp, dated May 16, 2002. None of these three documents (Reilly's letter to Judge Hochberg, Judge Hochberg's letter to Reilly, Reilly's brief) is reflected on the District Court docket sheet. However, the July order states that the Court desired to give Reilly adequate notice and that Reilly had since "had the requisite notice and opportunity to be heard in opposition to and reconsideration of the Court's April 11, 2002 Order." Thus, we are confident that the Court considered Reilly's brief on the matter, and the previous lack of notice was cured.

We now turn to the other requirements. Reading the April order, it might appear that the Court's only basis for entering the order was that Reilly had "threatened to sue the judicial officers who rendered decisions against him in federal court." We do not believe such a threat, standing alone, would constitute "exigent circumstances" warranting the entry of an order barring further filings. However, given the context of the order, including the protracted nature of these proceedings, and Reilly's numerous meritless filings, we find that the Court was justified in entering some sort of order restricting Reilly's filings.

We do have concerns as to the broad nature of the Court's order, which limits all new actions without regard to defendants, subject matter, or legal cause of action. We have previously cautioned against such orders. See Chipps v., United States Dist. Court for the Middle Dist. Of Pa., 882 F.2d 72, 73 (3d Cir. 1989); Gagliardi v. McWilliams, 834 F.2d 81,83 (3d Cir. 1987). Reilly's abusive filings seem to relate only to this custody matter. Thus, in keeping with this Court's decision in Chipps, we believe the scope of the District Court's

order should be limited to any action relating to Reilly's New Jersey state custody matter, no matter how attenuated. See Chipps, 882 F.2d at 73. We stress the breadth of this decision. Any claim against any defendant which can in any way be traced back to this litigation is controlled by this order. We thus modify the District Court's order to read as follows; 2

> Paul A. Reilly may not file any new case, proceeding, motion or other litigation document in state or federal courts dealing with the issues resolved in Reilly v. Weiss, et al., D.N.J. Civ. No. 97-cv-09883 without specific written leave of the District Court. 3 The Clerk of the District Court is instructed not to file any papers that Reilly may submit in violation of the District Court's order. "We caution [Reilly] that the District Court's order is enforceable by contempt penalties and that vexatious litigation in any court, even if not within the scope of the District Court's order as modified, may subject him to other sanctions." Chipps v. United States Dist. Court for the Middle Dist. Of Pa." 882 F.2d 72, 73 (3d Cir. 1989).

For the foregoing reasons, we will affirm the District Court's order regarding the orders on mandate (appeal No. 02-1382). We modify the orders entered April 16, 2002 and July 15, 2002, as noted above. 4

---

2 We have authority to modify the District Court's order pursuant to 28 U.S.C. § 2106.
See Matter of Packer Ave. Associates, 884 F.2d 745,748 n.2 (3d Cir. 1989).

3 The District Court's power to enjoin state court proceedings is limited by the antiinjunction statute, 28 U.S.C.A. § 2283, which prohibits District Courts from enjoining pending state court proceedings, "except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." Section 2283 does "not preclude injunctions against the institution of state proceedings, but only bars stays of suits already instituted." Kennecott Corp. v. Smith, 637 F.2d 181, 186-187 (3d Cir. 1980) (quoting Dombrowski v. Pfister, 380 U.S. 479, 484 n.2 (1965)).

4 Reilly's March 10,2003 motion to supplement the record is granted. Reilly's "Motion Incorprating Appellant and Appellants and Exhibits with Testimony of Judge Becker Under Separate Cover" is considered. We grant the motion to file an overlength motion. To the extent the motion is construed as a motion to disqualify Judge Barry, it is denied as moot, as the panel has been reconstituted, and does not include Judge Barry. To the extent it is construed as a motion to disqualify all circuit judges and disqualify staff attorneys, it is denied. Reilly bases his motion on an allegation that Third Circuit judges pave abdicated their responsibilities in pro se cases to staff attorneys. His allegation is not true-the judges of this court personally read and consider each brief and motion filed in cases on which they preside. We find no basis under 28 U..S.C. § 455 for the recusal of all circuit judges. We further fmd no basis for the "disqualification" of staff attorneys.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

NOTICE OF APPEAL TO UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

Paul Reilly
106 Hillside Avenue
Englishtown, N.J. 07726

ORIGINAL FILED
JAN 28 2002
WILLIAM T. WALSH
CLERK

PLAINTIFF

PAUL A. REILLY, individuallyand on
behalf of his son, Michael Reilly (*)

v.

D.C. Docket. NO. 2: 97 CV 05883
Hon. Faith S. Hochberg (FSH)

DEFENDANTS

ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH, and THERESA M. PAGANO

NOTICE IS HEREBY GIVEN that plaintiff, Paul A. Reilly, (*) acting solely on his own behalf in the above captioned matter, takes appeal to, and/or for the exercise of supervisory power of the United States Court of Appeals for the Third Circuit from the attached two (2) page order of January 28, 2002 in its entirety, and those orders it confirms.

PLEASE TAKE FURTHER NOTICE that pursuant to the appellate practice of the the Third Circuit's Law Division in pro se cases no civil information statement is attached.

JANUARY 28, 2002

Respectfully Submitted,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL A. REILLY, ET AL.

Plaintiffs,

CIVIL ACTION NO. 97-5883
(Hon. Faith S. Hochberg)

-vs-

ORDER

ALVIN WEISS, ET AL.
Defendants

DATE: January 7, 2002
FILED January 8, 2002
At 8:30 [Blank] M
WILLIAM T. WALSH CLERK

HOCHBERG, District Judge:

This matter has come before the Court by plaintiffs motions on December 13, 2001 and January 2, 2002, requesting that the Court resolve matters relating to the order on mandate. This Court having read the papers before the Court and for good cause shown; and

it appearing that the Court has already issued an order on mandate; and

it appearing that there is no error in the order on mandate; and

it appearing that plaintiff is berating the court with repetitive motions concerning the exact same matter; and it appearing that the matter is meritless

IT IS on this 7th day of January, 2002;

ORDERED that Plaintiffs request that the court resolve pending matters regarding the order on mandate is DENIED as moot; and it is

ORDERED that the Clerk of the Court not accept further motions regarding this Matter; and it is ORDERED that this is case is CLOSED.

s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.

UNITED STATES DISTRICT COURT
MARTIN LUTHER KING, JR.
FEDERAL BLD & U.S. COURTHOUSE
50 WALNUT STREET
P.O. BOX 419
NEWARK, N.J. 07101-0419

William T. Walsh
Clerk

CAMDEN OFFICE
USPO & Courthouse
401 Market Street
Camden, N.J. 08101

TRENTON OFFICE
402 East State Street
P.O.Box 515
Trenton, N.J. 08603

REPLY TO: Newark

Date: November 13, 2001

Karen A. Dumars
Office of the Attorney General of New Jersey
Department of Law & Public Safety
R.J. Hughes Justice Complex, CN
Trenton, New Jersey 08625

Re: Paul A. Reilly v Alvin Weiss, et al.,
Civil Action No. 97-5883 (FSH); USCA No. 00-3634

Gentlemen:

The mandate on the opinion of the U.S. Court of Appeals for the Third Circuit was filed on November 7, 2001.

It is requested that an order on the mandate be drafted and forwarded to this office for submission to the Court.

The mandate ordered that the order of the District Court is affirmed. Costs taxed against the appellants/plaintiffs and in favor of the appellees/defendants.

If you desire the appellate costs to become a judgment in this district, it will be necessary for you to write the Clerk of the U.S. Court of Appeals for the Third Circuit and request them to certify to this office the amount of said appellate costs as they did not insert the amount in the mandate.

Your order on the mandate should set forth the directions contained in the mandate.

Very truly yours,
WILLIAM T. WALSH, CLERK

By: s/Dana Sledge
Deputy Clerk

cc: Paul A. Reilly
106 Hillside Avenue
Englishtown, New Jersey 07726

UNITED STATES DISTRICT COURT
MARTIN LUTHER KING, JR.
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USPO & Courthouse
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Camden, N.J. 08101

TRENTON OFFICE
402 East State Street
P.O.Box 515
Trenton, N.J. 08603

REPLY TO: Newark
Date: November 13, 2001

John Christopher
O'Donnell, Kennedy, Vespole
Piechta & Trifiolis
414 Eagle Rock Avenue
West Orange, New Jersey 07052

Re: Paul A. Reilly v Alvin Weiss, et al.,
Civil Action No. 97-5883 (FSH); USCA No. 00-3634

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CLERK

By: s/Dana Sledge
Deputy Clerk

cc: Paul A. Reilly
106 Hillside Avenue
Englishtown, New Jersey 07726

UNITED STATES DISTRICT COURT
MARTIN LUTHER KING, JR.
FEDERAL BLD & U.S. COURTHOUSE
50 WALNUT STREET
P.O. BOX 419
NEWARK, N.J. 07101-0419 N.J. 08603

William T. Walsh
Clerk

CAMDEN OFFICE
USPO & Courthouse
401 Market Street
Camden, N.J. 08101

TRENTON OFFICE
402 East State Street
P.O.Box 515
Trenton, N.J. 08603

REPLY TO: Newark
Date: November 13, 2001

Peter M. Laughlin
Graham, Curtin & Sheridan
4 Headquarters Plaza
P.O. Box 1991
Morristown, New Jersey 07962

Re: Paul A. Reilly v Alvin Weiss, et al.,
Civil Action No. 97-5883 (FSH); USCA No. 00-3634

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WILLIAM T. WALSH,

CLERK

By: s/Dana Sledge
Deputy Clerk

cc: Paul A. Reilly
106 Hillside Avenue
Englishtown, New Jersey 07726

UNITED STATES DISTRICT COURT
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CAMDEN OFFICE
USPO & Courthouse
401 Market Street
Camden, N.J. 08101

TRENTON OFFICE
402 East State Street
P.O.Box 515
Trenton, N.J. 08603

REPLY TO: Newark
Date: November 13, 2001

John A. Patti
Patti & D'Allesandro
2424 Morris Avenue
Union, N.J. 07083

Re: Paul A. Reilly v Alvin Weiss, et al.,
Civil Action No. 97-5883 (FSH); USCA No. 00-3634

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WILLIAM T. WALSH,

CLERK

By: s/Dana Sledge
Deputy Clerk

cc: Paul A. Reilly
106 Hillside Avenue
Englishtown, New Jersey 07726

UNITED STATES DISTRICT COURT
MARTIN LUTHER KING, JR.
FEDERAL BLD & U.S. COURTHOUSE
50 WALNUT STREET
P.O. BOX 419
NEWARK, N.J. 07101-0419

Willaim T. Walsh
Clerk

CAMDEN OFFICE
USPO & Courthouse
401 Market Street
Camden, N.J. 08101

TRENTON OFFICE
402 East State Street
P.O.Box 515
Trenton, N.J. 08603

REPLY TO: Newark
Date: November 13, 2001

Patrick J. Hermesmann
McCreedy & Cox, Esquires
6 commerce Drive
Cranford, New Jersey 07016

Re: Paul A. Reilly v Alvin Weiss, et al.,
Civil Action No. 97-5883 (FSH); USCA No. 00-3634

Gentlemen:

The mandate on the opinion of the U.S. Court of Appeals for the Third Circuit was filed on November 7, 2001.

It is requested that an order on the mandate be drafted and forwarded to this office for submission to the Court.

The mandate ordered that the order of the District Court is affirmed. Costs taxed against the appellants/plaintiffs and in favor of the appellees/defendants.

If you desire the appellate costs to become a judgment in this district, it will be necessary for you to write the Clerk of the U.S. Court of Appeals for the Third Circuit and request them to certify to this office the amount of said appellate costs as they did not insert the amount in the mandate.

Your order on the mandate should set forth the directions contained in the mandate.

Very truly yours,
WILLIAM T. WALSH,
CLERK

By: s/Dana Sledge
Deputy Clerk

cc: Paul A. Reilly
106 Hillside Avenue
Englishtown, New Jersey 07726

UNITED STATES DISTRICT COURT
MARTIN LUTHER KING, JR.
FEDERAL BLD & U.S. COURTHOUSE
50 WALNUT STREET
P.O. BOX 419
NEWARK, N.J. 07101-0419

Willaim T. Walsh
Clerk

CAMDEN OFFICE
USPO & Courthouse
401 Market Street
Camden, N.J. 08101

TRENTON OFFICE
402 East State Street
P.O.Box 515
Trenton, N.J. 08603

REPLY TO: Newark
Date: November 13, 2001

Brian H. Corrigan
Corrigan & Lazarus
150 Morris Avenue
P.O. Box 476
Springfield, N.J. 07081

Re: Paul A. Reilly v Alvin Weiss, et al.,
Civil Action No. 97-5883 (FSH); USCA No. 00-3634

Gentlemen:

The mandate on the opinion of the U.S. Court of Appeals for the Third Circuit was filed on November 7, 2001.

It is requested that an order on the mandate be drafted and forwarded to this office for submission to the Court.

The mandate ordered that the order of the District Court is affirmed. Costs taxed against the appellants/plaintiffs and in favor of the appellees/defendants.

If you desire the appellate costs to become a judgment in this district, it will be necessary for you to write the Clerk of the U.S. Court of Appeals for the Third Circuit and request them to certify to this office the amount of said appellate costs as they did not insert the amount in the mandate.

Your order on the mandate should set forth the directions contained in the mandate.

Very truly yours,
WILLIAM T. WALSH, CLERK
By: s/Dana Sledge
Deputy Clerk

cc: Paul A. Reilly
106 Hillside Avenue
Englishtown, New Jersey 07726

GRAHAM, CURTIN & SHERIDAN
Four Headquarters Plaza
Morristown, New Jersey 07962-1991
Tel: (973) 292-1700 Fax: (973) 292- 1767
Attorneys for Third Party Defendants, Toby Kleinman, Esq. and Ilene Miklos, Esq.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL A. REILLY, and on behalf of his minor son, MICHAEL S. REILLY,

No. 97cv5883 (FSH)

Plaintiffs,

vs.

ORDER

ALVIN WEISS, PHILIP M. FREEDMAN,. RICHARD C. CAMP, ARLENE ALBINO, TOBY KELINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WALUCH and THERESA M. PAGANO,

Defendants

FILED
DEC 19, 2001
AT 8:30 s/SA M
WILLIAM T. WALSH
CLERK

The United States Court of Appeals for the Third Circuit having affirmed the Judgments of this Court entered on September 6, 2000, June 29, 2000, and February 9, 2001;

IT IS on this 17th day of December , 2001;
ORDERED that the within Complaint is hereby dismissed as to Defendants, Toby Kleinman and Ilene Miklos, with prejudice and without costs.

s/Faith Hochberg
Hon. Faith S. Hochberg, U.S.D.J.

ENTERED
On
THE DOCKET
DEC 26, 2001
WILLIAM T. WALSH
By/s SA
(Deputy Clerk)

49958-1

BRIAN CORRIGAN, ESQUIRE
150 Morris Avenue
P.O. Box 476
Springfield, New Jersey 07081-0476
(973) 467-3203
Attorneys for Defendants, Dr. DAVID BRODZINSKY and DR. TIMOTHY WELLES

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL A. REILLY, and on behalf of his minor son, MICHAEL S. REILLY,

No. 97cv5883 (FSH)

Plaintiffs,

vs.

ORDER

ALVIN WEISS, PHILIP M. FREEDMAN,. RICHARD C. CAMP, ARLENE ALBINO, TOBY KELINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WALUCH and THERESA M. PAGANO,

Defendants

FILED
NOV 29, 2001
AT 8:30 s/SA M
WILLIAM T. WALSH
CLERK

The United States Court of Appeals for the Third Circuit having affirmed the Judgments of this Court entered on September 6, 2000, June 29, 2000, and February 9, 2001;

IT IS on this 28 th day of November , 2001;

ORDERED that the within Complaint is hereby dismissed as *to* Defendants, Dr. David Brodzinsky and Dr. Timothy Welles, with prejudice and without costs.

s/Faith Hochberg
Hon. Faith S. Hochberg,

U.S.D.J.

ENTERED
On
THE DOCKET
NOV 30, 2001
William T. Walsch, Clerk
By/ s/SA
(Deputy Clerk)

O'DONNELL, KENNEDY & PIECHTA
COUNSELLORS AT LAW
414 EAGLE Rock Avenue
West Orange, NJ 07052-4211
Telephone 973-669-0100
Attorneys for Defendant, ARLENE ALBINO
Our File No. 35.12131

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL A. REILLY, and on behalf of his minor son, MICHAEL S. REILLY,

No. 97cv5883 (FSH)

Plaintiffs,

vs.

ORDER

ALVIN WEISS, PHILIP M. FREEDMAN,. RICHARD C. CAMP, ARLENE ALBINO, TOBY KELINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, *JAMES* W ALUCH and THERESA M. PAGANO.

Defendants

ENTERED
on
THE DOCKET
1-10-02
CLERK
WILLIAM T. WALSH, CLERK
By [blank]
(Deputy Clerk)

FILED
JAN 8 2002
AT 8:30 [Blank] M
WILLIAM T. WALSH,

The United States Court of Appeals for the Third Circuit having affirmed the Judgments of this Court entered on September 6, 2000, June 29, 2000, and February 9, 2001;

IT IS on this 2d day of January , 2002;

ORDERED that the within Complaint is hereby dismissed as to Defendant, Arlene Albino, with prejudice and without costs.

s/Faith S. Hochberg
U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

McCREEDY & Cox, esqs.
Six Commerce Drive
Cranford, New Jersey 07016
(908) - 709 - 0400
Attorneys for Defendant Wulach
Our File No. 98.16 - M

PAUL A. REILLY, and on behalf of his minor son, MICHAEL S. REILLY,

No. 97cv5883 (FSH)

Plaintiffs,

vs.

ORDER

ALVIN WEISS, PHILIP M. FREEDMAN,. RICHARD C. CAMP, ARLENE ALBINO, TOBY KELINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, *JAMES* W ALUCH and THERESA M. PAGANO,
Defendants

ENTERED
on
THE DOCKET
Mar – 6 2002
William T. Walsch, Clerk

FILED
MAR – 5 2002
AT 8:30_____M
WILLIAM T. WALSH
CLERK
By s/ SA_____
(Deputy Clerk)

The United States Court of Appeals for the Third Circuit having affirmed the Judgments of this Court entered on September 6, 2000, June 29, 2000, and February 9, 2001;

IT IS on this 4th day of March, 2002;

ORDERED that the within Complaint is hereby dismissed as to Defendant, James Wulach, with prejudice and without costs.

s/Faith S. Hochberg
U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

John A. Patti, Esq.
Patti & D'Allesandro
2424 Morris Avenue
Union, NJ 07083
Attorneys for Defendant Hagovsky

PAUL A. REILLY, and on behalf of his minor son, MICHAEL S. REILLY,

No. 97cv5883 (FSH)

Plaintiffs,

vs.

ORDER

ALVIN WEISS, PHILIP M. FREEDMAN,. RICHARD C. CAMP, ARLENE ALBINO, TOBY KELINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, *JAMES* W ALUCH and THERESA M. PAGANO,
Defendants

ENTERED
on
THE DOCKET
JAN 18 2002
William T. Walsch, Clerk

FILED
JAN 22 2002
AT 8:30_____M
WILLIAM T. WALSH
CLERK
By s/ SA_____
(Deputy Clerk)

The United States Court of Appeals for the Third Circuit having affirmed the Judgments of this Court entered on September 6, 2000, June 29, 2000, and February 9, 2001;

IT IS on this ___ day of _____, 2002;

ORDERED that the within Complaint is hereby dismissed as *to* Defendant, Mathias Hagovsky, with prejudice and without costs.

s/Faith S. Hochberg
U.S.D.J.

UNITED STATES DISTRICT COURT OF NEW JERSEY
Case No. 2:97 CV 05883 (FSH)

NOTICE OF AMENDED APPEAL TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

RECEIVED
MAY - 1 2002
AT 8:30_____M
WILLIAM T. WALSH, CLERK

Paul A. Reilly
106 Hillside Avenue
Englishtown, N.J. 07726

PLAINTIFF
PAUL A. REILLY, individually and on
behalf of his son, Michael Reilly

V. (Docket No. 02-1382)

DEFENDANT
ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH, and THERESA M. PAGANO

NOTICE IS HEREBY GIVEN in the above captioned matter that amended appeal to the United States Court of Appeals is taken from the entirety of the three (3) page April 15, 2002 Order (attached).

Dated: MAY 1, 2002

Respectfully Submitted,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

NOT FOR PUBLICATION

ORIGINAL FILED
APR 15 2002
WILLIAM T. WALSH, CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL A. REILLY,
Plaintiff,
V.
ALVIN WEISS, et al.,

Civil No. 97-5883
Hon. Faith S. Hochberg, U.S.D.J.
ORDER
DATE: April 11, 2002

HOCHBERG, District Judge:

This matter having come before the Court on its own motion: and it appearing that Plaintiff Paul, A. Reilly, has pursued a path of vexatious litigation in this Court against the judges and others who ruled against him in a prior state court proceeding; 1 and it appearing that

---

1 Plaintiff Paul A. Reilly brought this civil rights action against three state court judges, three lawyers, four forensic psychologists and his wife, arising out of a custody dispute involving Reilly's minor son in New Jersey state courts. The heart Plaintiff's Complaint is that the Defendants conspired on the basis of gender preference, to deprive him of the custody of his son following divorce proceedings.

In an order entered June 16, 2000 the Hon. Maryanne Trump Barry dismissed Plaintiff's Complaint for failure to state a claim upon which relief can be granted, finding that certain of the Defendants were absolutely immune for suit under judicial immunity and the remaining Defendants were not state actors.

In Order entered June 16, 2002 the Honorable Maryanne T. Barry dismissed Plaintiff's complaint for failure to state a claim upon which relief can be granted, finding that certain of the defendants were absolutely commune for suit under judicial immunity and the remaining defendants were not state actors.

By Order entered July 17, 1998 Judge Barry granted plaintiff's motion for reconsideration. By order entered October 7, 1998, Judge Barry confirmed for prior order and dismissed plaintiff's complaint with prejudice.

On appeal, United States Court of Appeals for the Third Circuit affirmed Judge Barry's decision dismissing Plaintiff Paul Reilly's claims as against all defendants in an opinion dated July 14, 1999. In their July 14 99 Judgment, the Third Circuit affirmed the dismissal of Plaintiff Paul Reilly's claims, but vacated the District Court's orders as respects Reilly's minor son, Michael Reilly. The Circuit Court remanded the case to allow the District Court to allow Paul A. Reilly to obtain counsel for his minor son Michael S. Reilly, or to allow the District Court to dismiss the complaint without prejudice as to Michael S. Reilly's, to allow him the opportunity to bring the claimant is only upon reaching majority.

the Third Circuit has issued the mandate affirming the dismissal of Reilly's claims; and it appearing that Reilly now has threatened to sue the judicial officers who rendered decisions against him in federal court; and good cause appearing,

IT IS on this 11th day of April, 2002,

ORDERED that the Plaintiff or anyone acting on his behalf or acting in concert or cooperation with Reilly, may not file any new case, proceeding. motion or other litigation document in this court or in the state courts of New Jersey without specific written order of this court; and

IT IS FURTHER ORDERED that the defendants named in this action are not required to
respond to any litigation document previously or subsequently served or filed by or on behalf of plaintiff, unless plaintiff has obtained prior written leave of court to file such document; and

IT IS FURTHER ORDERED that the Clerk of this court be and is hereby directed not to accept for filing any new case proceeding, motion or other litigation document submitted by or on behalf of Paul A. Reilly without poor written leave of this court; and

By Order dated August 4, 1999, Hon .Maryanne T. Barry ordered Plaintiff to notify this Court within thirty (30) days that he had either obtained counsel for his minor son, Michael S. Reilly, or that he wished to allow this Court to dismiss the complaint without prejudice to Michael S. Reilly to bring the claims in his own right upon reaching majority.

Plaintiff Paul A. Reilly notified that Court that he intended to Petition for a Writ of Certorari and sought a continuance of the Court's August 14,1999 Order while his Petition was pending. By Order dated September 22, 1999, Judge Barry ordered Plaintiff to, within 30 days of the date of the Supreme Court' s decision on Mr. Reilly's Petition for a Writ of Certiorari, either file the response called for in the Court's August 4, 1999 Order or advise the Court that his petition for certiorari had been granted. Plaintiff Paul A. Reilly never filed the .aforementioned petition and moved to recuse Judge Barry on November 29, 1999 . That motion was denied as moot in this Court's June 28, 2000 Order. Subsequent to this Order, Plaintiff submitted repetitive meritless motions to this Court seeking an order on mandate;

IT IS FURTHER ORDERED that Paul A. Reilly shall annex a copy of this order to all subsequent filings with this court, any federal court or any court in the State of New Jersey or Pennsylvania and shall refer to this order on the cover page of any document he desires to file;

and

IT IS FURTHER ORDERED that in the event that Paul A. Reilly, or anyone acting on his behalf, shall, in violation of the within order, file without having first obtained the prior written consent of this court, any pleading, new case, proceeding, motion or other litigation document, then Paul A. Reilly may be held in contempt of this court and shall be subject to arrest and other appropriate sanctions without further notice; and

IT IS FURTHER ORDERED that the criteria for determining whether or not approval to file shall be granted as follows:

1. A proposed filing should only be filed if it is not duplicative of any previous filing, unless that previous filing was decided without prejudice; and

2. A proposed filing should only be filed if it presents a colorable argument for the requested relief.

3. A proposed filing cannot be against any presiding official in any of his prior lawsuits.

IT IS FURTHER ORDERED that Paul A. Reilly is admonished that his multiple meritless pleadings have been ruled upon by both the United States District Court and the United States Court of Appeals for the Third Circuit. These rulings are final and shall not be the basis for further meritless legal action.

s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.

UNITED STATES DISTRICT COURT FOR JERSEY
Docket No. 97-05883 (FSH)

ORIGINAL FILED
AUG 14 2002
WILLIAM T. WALSH, CLERK

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869

NOTICE OF AMENDED APPEAL TO THE UNITED STATES THIRD CIRCUIT COURT OF APPEALS

PLAINTIFF
PAUL A. REILLY,
individually and on behalf
of his son., Michael Reilly

V.

DEFENDANT
ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH, and THERESA M. PAGANO

NOTICE IS HEREBY GIVEN in the above captioned matter that amended appeal to the United States Court of Appeals for the Third Circuit is taken solely by Plaintiff Paul A. Reilly in entirety from the attached one (1) page judgment and all underlying orders.

August 14, 2002

Respectfully Submitted,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

PAUL A. REILLY,
Plaintiff,
v.
ALVIN WEISS, et al.,
Defendants

Civil No. 97-5883
Hon. Faith S. Hochberg, U.S.D.J
ORDER
Date: July 8, 2002

Filed
July 9, 2002
At 8:30 _____M
WILLIAM T. WALSH
CLERK

Entered
July 15, 2002
William Walsh Clerk
by_____
Deputy Clerk

HOCHBERG, District Judge

This matter comes before the Court on Plaintiff's motion to vacate this Court's order of April 11, 2002, which placed limits on Plaintiff's ability to freely file frivolous lawsuits; and the Court, desiring to give Plaintiff adequate notice and an opportunity to file an opposition to such order; and Plaintiff now having had the requisite notice and opportunity to be heard in opposition to and reconsideration of the Court's April 11, 2002 Order; and for all of the reasons set forth in this Court's April 11, 2002 order; and good cause appearing,

IT IS on this 8th day of July, 2002,

ORDERED that given the pattern of vexatious litigation Plaintiff has engaged in whereby he sues and threatens to sue all judges and court personnel involved in his prior unsuccessful court actions, this Court has considered anew its Order of April 11, 2002 in light of Plaintiff's submissions in opposition thereto and hereby finds that the Order of April 11,2002 shall remain in full force and effect.

s /Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.

UNITED STATES DISTRICT COURT
THE DISTRICT OF NEW JERSEY
File Number 02:97 CV 05883 (FSH)

NOTICE OF APPEAL

Plaintiffs
Paul A. Reilly, individually
and on Behalf of his son,
Michael Reilly
v.
Defendants
Alvin Weiss, Philip M. Freedman, Richard, C. Camp, Arlene Albino, Toby Kleinman, Ilene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, JamesWulach and Theresa M. Pagano

ORIGINAL FILED
February 5, 2003
WILLIAM T. WALSH, CLERK

NOTICE IS HEREBY GIVEN that Paul A. Reilly, sole plaintiff in the above captioned matter, appeals to the United States Court of Appeals for the Third Circuit from the denial of all post-judgment motions (attached) and / or for the exercise of its supervisory jurisdiction concerning the refusal of the district court to dispose of all pending matters.

NOTICE IS ALSO HEREBY GIVEN OF request for an expedited appeal to be consolidated with case numbers 02-1382, 02-2821, 02-3261 whose brief and appendices are to be submitted on or before February 17, 2003.

Date: February 4, 2003

Respectfully submitted,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

Paul A. Reilly
106 Hillside Avenue
Englishtown, N.J. 07726

December 19, 2002

Hon. Faith S. Hochberg
C/O Clerk of the Court
United States District Court
District of New Jersey
M.L. King, Jr., Federal Bldg. & U.S. Court House
50 Walnut Street
Newark, N.J. 07101

Re: Reilly v. Weiss
Case No. 2:97 CV 05883

Dear Judge Hochberg,

As your Honor is aware there are a number of matters pending your attention. These matters, include the issues of bias and interest in fact and appearance as well as the shaping of the record as a means to shield yourself from public scrutiny and thus evade accountability. Examples of pending matters and their specifics are:

1. The "Motion for Disqualification & to Correct the Record" received by the Clerk on September 5, 2002 (Oral argument Requested)"; and

2. The action, received on September 28, 2002 by the Clerk, titled "Motion to Set a Date for Hearing & Proceeding to Enter Judgment and to Correct Technical Error (Oral Argument Requested)."

As you are also aware the Third Circuit has provided additional time for the resolution of matters pending in the

District Court by extending the time for filing the appellate brief and appendix. Yet at this writing your Honor appears not to have addressed any of the outstanding issues as the December 19, 2002 docket fails to show such entries. Since some matters have been pending before your Honor for a substantial period of time and since the appellate date is February 17, 2002 I must ask your Honor to immediately attend to them if I am to have any chance of a sufficient period to prepare for meaningful review. Furthermore, I must regretfully inform you this matter also serves to provide you with notice that if all pending matters are not attened to, memorialized and notice made by January 8, 2003, legal action will be taken against you top compel you to act and for any and or all other possible relief.

Thank you.

Sincerely,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

CC (W/encls): Chief Judge John W. Bissell via registered mail and all counsel via regular mail.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 02-1382 & 02-2821

To: Clerk Reilly v. Weiss

1) Application to Vacate Consolidated Briefing Schedule
2) Application Made Pursuant to L.A.R. 34.1 to Vacate June 28, 2002 Briefing
Order

In the interest of avoiding the unnecessary expenditure of judicial resources on preliminary matters which are unreasonably convoluted and opaque, the foregoing motions are granted. It appears, however, that the District Court through its January 8, 2002, April 15, 2002 and July 9, 2002 orders has indicated that it will not consider the motions which appellant avers are pending and that it has no intention entering any further rulings addressing the merits of those motions. In light of those orders it further appears unlikely that the District Court will entertain the merits of any motion to correct the record which the appellant might file.
Accordingly, so that this appeal is not left at a permanent standstill, appellant's brief and appendix shall be filed and served within either thirty (30) days of the date of entry of a decision or decisions on the motions appellant avers are currently pending in the District Court, or on any motion to correct the record filed in that Court, or February 17,2003, whichever date is earlier. No further extensions will be granted. If appellant feels that there are unresolved matters still pending as of February 17, 2003, that issue may be raised as. an issue in his brief.

—

Pending entry of an order, if any, by the District Court, the appellant shall file and serve written status reports on

September 23, 2002 and every forty-five (45) days. thereafter. The status reports shall list all matters which appellant feels are pending in the District Court.

For the Court,
s/ Marsia M. Waldron
Clerk

Dated: August 13, 2002 (as amended August 23, 2002)
CLW/cc:PAR BC
JCK JAP
CJC RFC

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
FAITH S. HOCHBERG
JUDGE

U.S.P.O. & COURTHOUSE
NEWARK, NJ 07101

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869

May 2, 2002

Re: Paul A. Reilly v. Alvin Weiss, et al.
97 Civil Action No. 5883
Dear Mr. Reilly:

I am construing your letter dated April 29, 2002, as a Motion to Vacate this Court's Order of April 11, 2002. You may file a brief in support of your motion on or before May 16, 2002.

You shall file your brief in support of the motion to vacate in the Clerk's Office only. Do not submit a copy to Chambers. You are also ordered to comply with all filing rules of the District Court for the District of New Jersey. You are also directed not to place any calls to chambers for any reason. Any inquiries may be made in writing only.

Defendants in the above-captioned action may respond to Plaintiff's brief within 14 days after having received Plaintiff's brief. Plaintiff then has 7 days to file a reply brief. This Motion

will be ruled on the papers pursuant to Fed. R. Civ. P. 78. Please do not appear unless specifically directed to do so by the Court.

Sincerely,

s/ Faith S. Hochberg

Hon. Faith S. Hochberg, U.S.D.J.

cc: Karen A. Dumars, Esq.
John Christopher Kennedy, Esq.
Brian H. Conigan, Esq.

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869
May 14, 2002

Hon. Faith S. Hochberg, D.C.J.
United States District Court for New Jersey
U.S.P.O & Courthouse
Newark, N.J. 07101

Clerk of the Court
United States District Court for New Jersey
U.S.P.O & Courthouse
Newark, N.J. 07101

RECEIVED
May 14, 2002
At 8:30_____M
WILLIAM T. WALSH, Clerk

Re: Reilly v. Weiss
Case No.2 :97 CV 05883
(App. Case No. 02-1382)

Dear Judge Hochberg and Clerk,

Attached to this original is one copy of the transcript request form stating no transcript is available since there was no oral argument. Also attached to this original is a copy of your Honor's letter dated May *2,2002*. Finally, with the original document are three copies of this letter with the May 2. 2002 letter attached.

The purpose of attaching this letter is the motion referred to was filed April 29, 2002 but does not appear on the docket hence the appellate court may no know of its existence and might consider that when setting a new briefing schedule. Although I have spoken with the Third Circuit case manage

the purpose of this letter is to request the motion be placed on the docket and the record to the appellate court be corrected.

Thank you.

Sincerely,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

CC (W/encls): Clerk of the Third Circuit, all counsel.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
FAITH S. HOCHBERG
JUDGE

U.S.P.O. & COURTHOUSE
NEWARK, NJ 07101

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869

May 2, 2002

Re: Paul A. Reilly v. Alvin Weiss, et al.
97 Civil Action No. 5883
Dear Mr. Reilly:

I am construing your letter dated April 29, 2002, as a Motion to Vacate this Court's Order of April 11, 2002. You may file a brief in support of your motion on or before May 16, 2002.

You shall file your brief in support of the motion to vacate in the Clerk's Office only. Do not submit a copy to Chambers. You are also ordered to comply with all filing rules of the District Court for the District of New Jersey. You are also directed not to place any calls to chambers for any reason. Any inquiries may be made in writing only.

Defendants in the above-captioned action may respond to Plaintiff's brief within 14 days after having received Plaintiff's brief. Plaintiff then has 7 days to file a reply brief. This Motion

will be ruled on the papers pursuant to Fed. R. Civ. P. 78. Please do not appear unless specifically directed to do so by the Court.

Sincerely,

s/ Faith S. Hochberg

Hon. Faith S. Hochberg, U.S.D.J.

cc: Karen A. Dumars, Esq.
John Christopher Kennedy, Esq.
Brian H. Conigan, Esq.

UNITED STATES FOR THE DISTRICT OF NEW JERSEY
Case No. 2:97 CV 05883 (FSH)

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869

PLAINTIFFS
PAUL A. REILLY, individually and on behalf of his son, Michael Reilly
V.
WILLIAM T. WALSH, CLERK

RECEIVED
MAY 16 2002
T 8:30_____M

DEFENDANTS
ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH, and THERESA M. PAGANO

PLAINTIFF INFORMAL BRIEF IN SUPPORT OF MOTION TO VACATE APRIL 11, 2002 SANCTIONS ORDER

Table of contents

Statement of the Facts and Case 1

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Argument

1. THE IMPOSITION OF SANCTIONS, INCLUDING RESTRAINTS, WITHOUT NOTICE AND OPPORTUNITY TO BE HEARD PRIOR TO JUDGMENT RENDERS THE APRIL 11,2002 ORDER VOID BECAUSE IT IS INCONSISTENT WITH DUE PROCESS.

2. THE ORDER IS ALSO VOID BECAUSE IT OFFERS THE AVERAGE PERSON AS JUDGE THE POSSIBLE TEMPTATION NOT TO HOLD THE BALANCE NICE, CLEAR AND TRUE BETWEEN YOUR HONOR AND THE PLAINTIFF.

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STATEMENT OF THE FACTS AND CASE

This matter arises from the sua sponte imposition of sanctions in an order signed on April 11, 2002 and entered on April 15, 2002 (Order"). Motion, supporting letter brief and certification were submitted pursuant to Fed. R. Civ. P. 59(a.e) and / or Fed. R. Civ. P. Civ. P. 60.(b)(4) on April 29, 2002 seeking to vacate or stay said Order pending appeal on the grounds the order is void because it violates fundamental due process. Appeal was taken on May 1,2002. The court construed the motion as an order to vacate and set a briefing schedule with the initial brief due on or before May 16, 2002. Letter Order of May 2, 2002. Appeal transfers jurisdiction to the court of appeals and until the mandate issues district court action is a nullity. Kusav v. U.S., 62 F.3d 192, 194 (7th cir. 1995). However, an application to vacate an order is appropriate on a motion for reconsideration. Vance by & through Hammons, 90 F.3d 1145, 1148 (6th Cir. 1996). Therefore, review of the process in no way touches upon the merits. In Re Tutu Wells, 120 F.3d 368.378. (3rd Cir. 1997).

The Order admonishes plaintiff and restrains the right to file papers within the New Jersey and Pennsylvania. There is no indication in the record the plaintiff was provided an opportunity to oppose the sanctions prior to their entry. The record suggests your Honor issued the sanctions on your own motion without notice or opportunity to object.

Denial of due process is a manifest injustice. U.S. v. Crusco, 546 F.2d 71, 76 (3rd Cir. 1976). The April 15, 2002 Order is void because it issued in opposition to the fundamental right of notice and the opportunity to be heard prior to judgment. Included in the Order is what appears to be a final order of injunction. It appears to include a final order of injunction because (1) it does not meet the notice, hearing and duration requirements for a temporary restraining order, Fed. R. Civ. P. 65(b), (2) it does not meet the requirements for a

pendent lite order issued prior to a decision on the merits, Fed. R. Civ. P. 65 (b), and (3) it is and adjudication of the merits, Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 546 n. 12 (1987), directed to plaintiff, is enforceable and accords substantive constraints in more than a temporary fashion. Santana Products v. Compression Polymers, 8 F.3d 152, 154 (3rd Cir. 1993).

STANDARD OF REVIEW

A judgment is void where the court that rendered it lacked jurisdiction of the subject matter, or the parties, is a plain usurpation or acted in a manner inconsistent with due process of law. United Switch & Signal Div., American Standard Inc. v. United Elec., Radio and Mach. Workers of America, Local 610; 900'F.2d 608,612 (3rd Cir. 1990); Eberhardt v. Integrated Design & Construction, Inc., 167 F.3d 861, 871 (4th Cir. 1999) quoting u.S. v. Schwartz, 976 F.2d 213, 217 (4th Cir. 1992); Antoine v. Atlas Turner, Inc., 666 F.3d lOS, 108 (6th Cir. 1995) quoting In Re Edwards, 962 F.2d 641, 644 (7th Cir. 1992); Carter v. Fenner, 136 F.3d 1000, 1005 (Sth Cir. 1998); Owens-Coming Fiberglass Corp. v. wholesale Inc., 759 F.2d 1440, 1448 (9th Cir. 1985). And, relief from a judgment that is void because it is inconsistent with due process is mandatory. Orner v. Shalala, 30 F.3d 1037, 1310 (lOth Cir. 1994) citing V.T.A., Inc. v. Airco, Inc, 597 F.2d 220, 224 (Ioth Cir. 1979); Antoine at 108 quoting United States v. Indoor Cultivation. Equip. From High Tec Indoor Garden Supply, 55 F.3d 1311, 1317 (7t Cir. 1995); Carter at 1005.

Regardless of the merits an imposition of sanctions and / or the imposition of restraints that does not comport with the requirements of due process is an inconsistency with due process that renders the judgment void. Simmennan v. Corino, 27 F.3d 58, 60, 61 (3rd cir. 1994); De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990), cert. den. 498 U.S. 1001; Williams v. McKeithen, 939 F.2d 1100, 1105 (5th Cir. 1991).

1. THE IMPOSITION OF SANCTIONS, INCLUDING RESTRAINTS, WITHOUT NOTICE AND OPPORTUNITY TO BE HEARD PRIOR TO JUDGEMENT RENDERS THE APRIL 11,2002 ORDER VOID BECAUSE IT IS INCONSISTENT WITH DUE PROCESS.

Entry of the Order without notice and the opportunity to be heard violates fundamental due process. Access to the court is protected by the First and Fifth Amendments of the Constitution. First, the First Amendment provides that "Congress shall make no law * * * abridging * * * the right of the people * * * to petition the court for the redress of grievances." 1st Amend.. U.S. Const. The right of access to the court for the redress of grievances is a fundamental right for the reasons it is one aspect of the right to petition. California Motor Transport Co. v. Trucking Unlimited. 404 US. 500. 510 (1972). Second, the Fifth Amendment provides that "No person shall be * * * deprived of life, liberty, or property, without due process oflaw * * *." 5th Amend..US. Const. Fifth Amendment "Due Process of Law" means "a charge, defense, judgment before and by a legally constituted court." French v. Barber Asphalt Paving Co.. 181 U.S. 324, 330 (1901).

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Mullane v. Central Hanover Trust Co.. 339 U.S. 206. 314 (1950).

"For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally ftmdamental that the right to notice and an opportunity to be heard' must be granted at a meaningful time and in a meaningful manner.'" Fuentes v. Shevin. 407 u.S. 67. 80 (1994)(citations omitted).

"Fundamental fairness and the established law of this circuit require that a court afford the parties due process by giving them notice and opportunity to be heard before imposing sanctions. * * * The party against whom sanctions are being considered is entitled to [I] notice of the legal rule on which the sanctions would be based, [2] the reasons for the sanctions, and [3] the form of the potential sanctions. Prosser v. Prosser. 186 F.3d 403, 406 (3rd Cir. 1999) citing In Re tutu Wells. 120 F.3d at 379 (3rd Cir. 1997 citing Simmerman v. Corina, 27 F.3d 58, 64 (3rd Cir. 1994); La Salle Nat. Bank v. First Conn. Holding Group, III F. Sup. 2d 507. 510 & n.2 (D.N.J 2000).

The sanction of an injunction is also subject to the "stringent notice requirements of issuance and relief set forth in Rule 65." Western Water Management Inc. v. Brown, 40 F.3d 105, 09 (5th Cir. 1994)(modification of existing injunction). For example, like the complaint for sanctions an injunction must set forth the rule on which it is based. Hitchman Coal & Coke Co. v. Mitchell. 245 U.S. 229. 234-235 (1916); Citizens Concerned for Separation of Church & State v. City of

Denver, 628 F.2d 1289,1298-99 (10th Cir. 1980), cert. den 452 U.S. 963.

So too restraint of the right of access to the court is subject to notice and the opportunity to be heard prior to judgment. Any system of prior restraint "comes to this Court bearing a heavy presumption against its constitutional validity. Southeast Promotions, Ltd. V. Conrad, 420 U.S. 546, 558 (1975)(citations omitted); KAV. v. City St. Paul, 505 U.S. 377, 381 (1992). And, the Court requires "fair notice and opportunity for an adversary hearing before an injunction is issued." Board of Regents v. Roth, 408 U.S. 564, 575 n.14 (1972). Since the fundamental requisite of due process is the right to be heard, Goldberg v. Kelly, 397 U.S. 254, 267 (1970) (citations omitted), the hearing must be at a meaningful time and in a meaningful manner, Id. At 268, and must be tailored to the capacities and circumstances of those who are to be heard. Id. At 268 - 69. Indeed, the Supreme Court has said that Rule 65 requires, at the very least, " a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare for such opposition." Granny Goose Foods, Inc., v. Brotherhood of Teamsters, 415 U.S. 423, 432 n.7 (1974) citing Sims v. Greene, 161 F.2d 87 (3rd Cir. 1947).

The Circuit Courts have also reached similar conclusions. Thus a permanent injunction is not available through an ex parte procedure. United States v. Crusco, 464 F .2d 1060, 1062 (3rd Cir. 1972). Also, no district court may not enter a sua sponte injunction that effects the rights of the parties without either entertaining evidence and ruling upon the objections of the affected party or (2) obtaining the consent of the affected parties. Reynolds v. Butts, 251 F.3d. 1350, 1351 (11th Cir. 2001), Reh. En Bane den., 2001 U.S. App. LEXIS(one) 24072, Cert. Den., 2002 U.S. LEXIS(one) 1184. Even when a sua sponte injunction is proper, and even when the district court's action is understandable in light of the vexatiousness of the litigation, such an injunction may not

issue without notice to the party enjoined and an opportunity for that party to be heard. MLE Reality Associates v. Handler, 192 F.3d 259,261 (2nd Cir. 1999); De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990). Procedural niceties equate with due process and must be afforded the parties. U.S. v. Board of School Commissioners of the City of Indianapolis, 128 F.3d 507,512 9th Cir 1997)(Posner, C.J)(reversing amending and modification of injunction).

Due process protects both the innocent and the guilty:

> Judge Glasser, in his order imposing the injunction on future challenges by Moates to his 1975 conviction, recognized the existence of this rule, but nonetheless chose not to comply with it because '[t]he observance of a requirement, in this case, that Moates be given notice and an opportunity to be heard would only compound the ,abuse of the judicial process and further needlessly tax the resources of the court.' Moates v. Barkley, 927 F. S pp. at 598. But since such sanctions are, by hypothesis, imposed on litigants whom the court believes have a penchant for filing frivolous or vexatious claims, the rule requiring a hearing must be designed for precisely those cases. If we were to hold that the danger that a litigant will misuse his or her opportunity to be heard excuses the district court's failure to respect the litigant's right to such a hearing, the exception would swallow the rule. Moates v. Barkley. 147 F.3d 207. 209 (2nd cir. 1998).

Procedure by presumption is always cheaper and easier than individualized determination. . Stanley v. Illinois. 405 u.S. 645. 657 (1972). But the "key to First Amendment analysis" is, however, "that the government's interest in achieving its goals as effectively and efficiently as possible is * * * a

relatively subordinate interest when it acts as sovereign * * *." Waters v. Churchill, 511 u.S. 661, 675 (1994).

> "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones. Stanley, 405 U.S. at 657.

A court has discretion to take judicial notice on its own motion. Fed. R. Evid. *201(c).*

However, the parties must have an opportunity to be heard as to propriety and tenor of taking judicial notice. Fed. R. Evid. 201 (e). Due Process precludes the use of such evidence to foreclose an opportunity to offer a contrary presentation. Bowman Transp. v. Ark-Best Freight System, 419 u.S. 281, 288 n.4 0974). Judicial notice does not preclude its opponent from disputing the matter. Ohio Bell Telephone Co. v. Public Utilities Comm., 301 U.S. 292, 301-302 0937). "[A]s was pointed out long ago, a court's record would establish its power and the power would be proved by the record." Williams v. North Carolina, 325 U.S. 226, 234 (1945). "Basic considerations of procedural fairness demand an opportunity to be heard on the propriety of taking judicial notice and the tenor of the matter noticed. The rule requires granting the opportunity on request. * * * And, in the absence of advance notice, a request made after the fact could not in fairness be construed untimely. Fed. R. Evid. 201, Notes of the Advisory Committee on Rules, subdivision (e).

2. THE ORDER IS ALSO VOID BECAUSE IT OFFERS THE AVERAGE PERSON AS JUDGE THE POSSIBLE TEMPTATION NOT TO HOLD THE BALANCE NICE, CLEAR AND TRUE BETWEEN YOUR HONOR AND THE PLAINTIFF.

The lack of notice and opportunity to be heard prior to the imposition of sanctions suggests the outcome was a foregone conclusion that enhanced the interest of not being a litigant in a pending suit. Therefore, the Order is also void because the Fifth Amendment guarantees litigants a neutral and disinterested judge. Marshall v. Jerrico. Inc., 446 U.S. 238,239,242 (1980).

> "A fair trial in a fair tribunal is basic to due process. Fairness of course requires an absence of bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own 'cause and no man is permitted to try a cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, that 'every procedure that would offer a possible temptation to the average person as judge * * * not to hold the balance nice, clear and true between the defense and the accused, denies the latter due process of law.' Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their best to weigh the scales of justice between the contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.'" In Re Murchison, 349 U.S. 133, 136 (1955) (citations omitted).

CONCLUSION

Given the imposition of sanctions is inconsistent with due process and the procedure offers the average person as judge the possible temptation not to hold the balance nice, clear and true between your Honor and the plaintiff the judgment is void and must be vacated.

Date: May 16, 2002

Respectfully submitted,
/s Paul A. Reilly
Paul A. Reilly, Pro Se

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UNITED STATES DISTRICT COURT FOR NEW JERSEY
Case No. 2:97 CV 05883 (FSH)

Paul A. Reilly
153 Park Avenue
Randolph, NJ. 07869

PLAINTIFFS
PAUL A REILLY, individually and on behalf of his son, Michael Reilly

MOTION FOR DISQUALIFICATION AND TO CORRECT THE RECORD
ORAL ARGUMENT REQUESTED

v

DEFENDANTS
ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH and THERESA M. PAGANO

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DEAR MADAM & SIRS:

PLEASE TAKE NOTICE of application is made to the Hon. Faith S. Hochberg, United States District Court judge for the District of New Jersey, U.S.P.O & Courthouse, Newark, N.J. 07101, for a hearing and order, on or before October 14, 2002 For disqualification and to Correct or Modify the Record.

PLEASE TAKE FURTHER NOTICE oral argument is requested.

PLEASE TAKE FURTHER NOTICE that in making this application appellant relies on this Motion, Certification of Plaintiff with exhibits attached, Brief, Form of Order and this Certification of Service.

September 5, 2002

Respectfully Submitted,
s/Paul A. Reilly
Paul A. Reilly, Pro Se

UNITED STATES DISTRICT COURT
FOR NEW JERSEY
Docket No. 97-05883 (FSH)

Paul A. Reilly
153 Park Avenue
Randolph, N.J 07869

PLAINTIFF
PAUL A. REILLY, individually and on
Certification of Service
behalf of his son, Michael Reilly

v
DEFENDANTS
ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH and THERESA M. PAGANO

I, Paul A. Reilly, of full age, do hereby certify as follows:

A copy of the Motion For disqualification and to Correct or Modify the Record), Certification of Plaintiff with exhibits attached, letter brief, Form of Order and this Certification of Service were mailed to the defendants via regular mail on September 5, 2002 at the addresses listed below.

I realize if anything said concerning the service of this motion is willfully false I am subject to punishment.

September 5, 2002

Respectfully Submitted,
s/Paul A. Reilly
Paul A. Reilly, Pro Se

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UNITED STATES DISTRICT COURT
FOR NEW JERSEY
Case No. 97 CV 05883 (FSH)

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869

PLAINTIFFS
PAUL A REILLY, individually and on
ORDER
behalf of his son, Michael Reilly

V.

DEFENDANTS
ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH, and THERESA M. PAGANO

This matter has been brought before the court by motion of plaintiff for disqualification and to correct and modify the record; and whereas both the plaintiff and the defendants having notice and opportunity to be heard; and good cause appearing:

IT IS ordered this_____ day of October, 2002,

That the Honorable Judge Faith S. Hochberg is disqualified and this order is notice of that disqualification for the purpose of reassignment of the case for the correction to or modification of the district court record in the above captioned case.

_____

Hon. Faith S. Hochberg, U.S.D.J

UNITED STATES FOR THE DISTRICT OF NEW JERSEY
Case No. 2:97 CV 05883 (FSH)

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869

PLAINTIFFS
PAUL A. REILLY, individually and on behalf of his son, Michael Reilly

v.

DEFENDANTS
ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH, and THERESA M. PAGANO

PLAINTIFF BRIEF IN SUPPORT OF MOTION FOR DISQUALIFICATION, TRANSFER AND CORRECTION AND / OR MODIFICATION OF THE RECORD RETURNABLE OCTOBER 14,2002 OR AS SOON AS PLAINTIFF MAYBE HEARD

UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 00-3634

PAUL A. REILLY, on behalf of his minor son, Michael S. Reilly

v.

ALVIN WEISS; PHILIP M. FREEDMAN; RICHARD C. CAMP; , ARLENE ALBINO; TOBY KLEIMAN; ILENE MIKLOS; TIMOTHY WELLES; MATIHAS HAGOVSKY; DAVID BRODZINSKY; JAMES WULACH; THERESA M. PAGANO

Paul A. Reilly; Michael S. Reilly, Appellants

On Appeal From the United States District Court For the District of New Jersey
(D.C. Civ. No. 97-CV-05883)
District Judge: Honorable Faith S. Hochberg

Submitted Under Third Circuit LAR 34.1 (a) August 7, 2001

BEFORE: ALITO, AMBRO and WEIS, CIRCUIT JUDGES

(Filed: August 23, 2001)

OPINION

PER CURIAM

Paul A. Reilly filed a complaint in the District Court alleging that his civil rights, and those of his minor son (Michael S. Reilly), were violated in connection with a custody dispute involving Michael. This Court previously affirmeded the District Court's dismissal of Paul Reilly's claims, but remanded with instructions that the District Court vacate the order as to Michael Reilly's claims. On August 4, 1999, the District Court ordered Reilly to inform the court within 30 days of the date of the order that he had obtained counsel for his son, or that he wished to have the court dismiss the claims without prejudice to allow Michael Reilly to bring the claims in his own right upon reaching majority.

On September 22, 1999, the Court entered an order granting Reilly's motion for a continuance to allow him to file a petition for a writ of certiorari in the United States Supreme Court. The order required Reilly to file the response called for in the August 4, 1999 order within thirty days of the date of action by the Supreme Court, if certiorari was not granted. Reilly did not file a petition for certiorari, but on November 24,1999, he filed a motion for disqualification of District Judge Maryanne Trump Barry and for transfer to another judge. When Judge Barry was appointed to this Court, the case was reassigned to Judge Faith S. Hochberg. Reilly then moved to disqualify Judge Hochberg, based on her chamber rule that states in part that "[0]ne copy of all briefs filed shall be submitted directly to Chambers and in accordance with L. Civ. R. 7.2. Additionally, diskettes containing all filed papers and briefs in Word Perfect 7.0 or higher shall be submitted to chambers."

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1. References to "Reilly" refer to Paul Reilly, unless otherwise indicated.

On June 29, 2000, the Court entered an order reopening the case, denying Reilly's motion for disqualification of Judge Barry as moot. Reilly then filed a motion for reargument of that order. On September 26,2000, the Court entered an order denying the motion for reargument, denying his motion for disqualification of Judge Hochberg, and dismissing the complaint without prejudice to Michael Reilly to bring the claims in his own right upon reaching majority. Reilly filed a motion for reargument of the September 26th order, then filed a notice of appeal from the orders entered June 29th and September 26th. On February 9, 2001, the Court entered an order denying Reilly's motion for reconsideration and reargument. Reilly then filed an amended notice of appeal from the order entered February 9, 2001. 2

This case was remanded for the sole purpose of allowing Michael Reilly to obtain counsel, or for the District Court to dismiss the claims without prejudice to Michael Reilly bringing them in his own right upon reaching majority. Because Reilly did not obtain counsel for his son within the reasonable time allotted by the Court (including a continuance to file a certiorari petition), the Court properly dismissed the without prejudice as to Michael Reilly. We will therefore affirm. 3

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2 Although it is not completely clear, this Court will assume that Reilly intends to appeal from the orders listed in the original notice of appeal, as well as the order listed in the amended notice of appeal; i.e., the orders entered June 29, 2000, September 26, 2000, and February 9, 2001.

3. We find no error in the other aspects of the challenged orders. Reilly's motion for disqualification of Judge Barry was clearly moot when ruled upon. Reilly's motion for

disqualification. of Judge Hochberg appears to be based solely on her chambers rule regarding submission of documents in Word Perfect 7.0. The record shows that none of Reilly's documents were rejected for failure to comply with this rule. Further, Judge Hochberg explicitly waived the requirement for Reilly and stated that she had fully considered his arguments. Thus, there was no basis for her disqualification. The motion for reconsideration were properly denied because the motion was not based on any intervening change in controlling law or new evidence, and Reilly did not show that a clear error of law or manifest injustice was done. See In re City of Philadelphia Litig., 158 FJd 711, 718 (3dCir. 1998).

UNITED STATES COURT OF APPEALS
FOR THIRD CIRCUIT

NO. 00-3634

PAUL A. REILLY on behalf of his minor son, Michael S. Reilly
v.
ALVIN WEISS; PHILIP M. FREEDMAN; RICHARD C. CAMP; ARLENE ALBINO; TOBY KLEIMAN; ILENE MIKLOS; TIMOTHY WELLES; MATHIAS HAGOVSKY; DAVID BRODZINSKY; JAMES WULACH; THERESA M. PAGANO

Paul A. Reilly; Michael S. Reilly, Appellants

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 97-CV-05883)
District Judge: Honorable Faith S. Hochberg

Submitted Under Third Circuit LAR 34.1(a) August 7, 2001

BEFORE: ALITO. AMBRO and WEIS, CIRCUIT JUDGES

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit, LAR 34.1 (a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgment of the District Court entered September 26, 2000, and the orders entered June 29,2000 and February 9, 20001 be

and the same are hereby affirmed. Costs, taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:
S/ Marsia M. Waldron
Clerk

DATED: 23 August 2001

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 02-1382, 02-2821, 02-3261 & 03-1402

PAUL A. REILLY, and on behalf of his minor son, Michael S. Reilly,

v.

ALVIN WEISS; PHILIP M. FREEDMAN; RICHARD C. CAMP; ARLENE ALBINO; TOBY KLEIMAN; ILENE MIKLUS; TIMOTHY WELLES; MATHIAS HAGOVSKY; DAVID BRODZINSKY; JAMES WULACH; THERESA M. PAGANO

Paul A. Reilly,
Appellant

On Appeal From the United States District Court For the District of New Jersey
(D.C. Civ. No. 97-CV-09883) District Judge:
Honorable Faith S. Hochberg

Submitted Under Third Circuit LAR 34.1
(a) November 18, 2003

Present: SCIRICA, Chief Judge, SLOVITER, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, CHERTOFF, and FISHER Circuit Judges,

SUR PETITION FOR PANEL REHEARING
WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the Circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is DENIED.

By the Court,
/s/ Thomas L. Ambro, Circuit Judge

Dated: July 19,2004
CL W/cc: Mr. Paul A. Reilly
Leon B.. Piechta, Esq.
Christopher J. Carey, Esq.
Brian Corrigan, Esq.
John A. Patti, Esq.
Robert F. Cox, Esq.
Diane M. Lamb, Esq.

Paul A. Reilly
106 Hillside Avenue
Englishtown, N.J. 07726
December 13, 2001

RECEIVED
DEC 13 2001
at 8:30_____M
William T. Walsh, Clerk

Clerk of the Court
United States District Court
District of New Jersey
M. L. King, Jr., Federal Bldg. & U.S. Court House
50 Walnut Street
Newark, N.J. 07101

Re: Reilly v. Weiss
Case No. 2:97 CV 05883
C.A. No. 00-3634

Enclosed please find an original and three copies of (1) the Motion To File The Proposed Order On Mandate and Motion To Reconsider, Correct And Amend The Entry Of Mr. Corrigan's November 29,2001 Order on Monday, December 17,2001, and (2) supporting certification with attached letter and including certification of service.

Please route the appropriate copies to Judge Hochberg, send a copy to Ms. Dana Sledge and retain the remaining copy(s) for the case file. Thank you.

Sincerely,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

CC (W/encls); All counsel via regular mail.

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY
Case No. 2:97 CV 05883
C.A. No. 00-33634

RECEIVED
DEC 13 2001
At 8:30 _____M
William T. Walsh, Clerk

Paul A. Reilly
106 Hillside Avenue
Englishtown, N.J. 07726

MOTION TO FILE THE PROPOSED ORDER ON MANDATE AND MOTION TO RECONSIDER, CORRECT AND AMEND THE ENTRY OF MR. CORRIGAN'S NOVEMBER 29: 2001 ORDER ON MONDAY, DECEMBER 17,2001.

PLAINTIFFS
PAUL A. REILLY, individually and on Behalf of his son, Michael Reilly

V.

DEFENDANTS

ALVIN WEISS, PHILIP M. FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIAS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH, and THERESA M. PAGANO

TO: Brian Corrigan
P.O. Box 476

150 Morris Avenue
Springfield, K.J. 07081

Christopher Carey / Peter Laughlin
Graham, Curtin & Sheridan
P.O. Box 1991
4 Headquarter's Plaza
Morristown, N.J. 07962
Karen Du Mars
Dept. of Law &. Public Safety; Division of Law
Richard J. Hughes Justice Complex
P.O. Box 112
25 Market Street
Trenton, N.J. 08625-0112

Patrick Hermesman
McCreedy & Cox
2nd Floor
6 Commerce Drive
Cranford, N.J. 07016

John C. Kennedy
O'Donnell, Kennedy, Vespole & Piechta
414 Eagle Rock Avenue
West Orange, N.J. 07052

John A. Patti
Patti.& D'Allesandro
2424 Morris Avenue
Union, N.J. 07083

DEAR MADAM & SIRS:

PLEASE TAKE NOTICE of application to the Honorable Faith S. Hochberg, United States District Court Judge, District of New Jersey, M.L. King, Jr., Federal Bldg. & U.S. Court House,

59 Walnut Street, Newark, N.J. 07101, as soon as Appellant may be heard, for an order to file plaintiffs proposed form of Order on Mandate and to reconsider, correct and amend the entry of Mr. Corrigan's November 29, 2001 Order on December 17, 2001.

PLEASE TAKE FURTHER NOTICE that in making this application appellant relies on this motion and the accompanying Certification with attached letter.

December 13, 2001

Respectfully Submitted,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

Certification of Service

I, Paul A. Reilly, off full age, do hereby certify a copy of the above motion and aforesaid certification of service on the parties at the addresses listed above by regular mail.

I realize if anything said concerning the service of this motion is willfully false I am subject to punishment.

December 13, 2001

Respectfully Submitted,
s/ Paul A. Reilly

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Case No. 2:97 CV 05883
C.A. No. 00-3634

Paul A. Reilly
106 Hillside Avenue
Englishtown, N.J. 07726

RECEIVED
DEC 13 2001
At 8:30 _____M
William T. Walsh, Clerk

CERTIFICATION IN SUPPORT OF MOTION TO FILE THE PROPOSED ORDER ON MANDATE AND MOTION TO RECONSIDER, CORRECT AND AMEND THE ENTRY OF MR. CORRIGAN'S NOVEMBER 29, 2001 ORDER ON MONDAY, DECEMBER 17, 2001.

PLAINTIFFS
PAUL A. REILLY, individually and on behalf of his son, Michael Reilly
v.

DEFENDANTS
ALVIN WEISS, PHILIP M, FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIS HAGOVSKY, DAVID BRODZINSKY, JAMES WULACH, and THERESA M. PAGANO

I, Paul A Reilly, of full age and the plaintiff in the above captioned matter, do hereby certify as follows;

1. This certification is offered in support of the motion to continue the matter of Mr. Corrigan's Order on mandate entered November 29, 2001 and the submission of Plaintiffs proposed form of Order on mandate to Monday, December 17, 2001.

2. The six different counsels for the defendants were requested to submit their proposed form of order on mandate plus any bill of costs by letter dated November 13, 2001. It is My understanding that I have five days from that time to submit objections. Thus my response, including time for mailing is due on December 26, 2001.

3. On November 26, 2001 correspondence to your Honor requested no order be entered until all the layers for the defendants had had an opportunity to reply (Attached as A). However, a form of order submitted by Mr. Corrigan was entered on November 29, 2001. since reconsideration must be submitted within 10 business days a motion for reconsideration is due today, December 13,2001.

4. Substantive preparation of that motion and plaintiff's proposed form of order on mandate was finished using Rutgers's Law library on December 12, 2001 with the intent to deliver both documents today. However, it cannot be delivered for the reason the computer used in its preparation will not boot, i.e. it will not read the basic instructions required to operate it. The machine is a Toshiba 1100 (portable) built in 1986 and the problem lies in the power source.

5. Since the machine will not boot, however, I cannot retrieve the basic files and must make arrangements to have the disk reconstructed (if damaged by the failed attempt to boot) or backed up or reconfigured for use on another machine.

6. This must happen because the 1996 Toshiba uses a 750 K floppy disk versus the current 1.4 K floppy. The operating system

of the Toshiba is 1986 vintage DOS 2.25 while more recent hardware, to which I have access, uses Windows 97 or higher. It is not unusual for the Toshiba disk format to be unreadable by the more recent machines or for that hardware to damage the 750 k disk. Thus to assure that I do not lose the documents I must have them copied and or converted.

7. The will be done by this coming Monday, December 17, 2001 and the resulting documents will also be delivered to the court and mailed to the defendants on December 17, 2001. Alternatively, since the machine is old by computer standards (it is roughly the equivalent of an IBM 286) getting a new power source will, if available, take some time. Moreover, by effecting the disk conversion the machine will be maintained in its current condition and I will make it available for inspection at your Honors' or any defendant counsels' request. This motion is the result of a mechanical failure and not intentional delay.

8. Therefore it is requested that your Honor grant the motion as (1) the request to deliver these documents does not prejudice the defendants, (2) the delay is not intentional but mechanical, and (3) the extension is minor, i.e. two business days to take the necessary corrective action. .

I certify the above to be true and realize if anything said above motion is willfully false I am subject to punishment.

Dated: December 13, 2001

Respectfully Submitted,
s/ Paul A. Reilly
Paul A. Reilly. Pro Se

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Case No. 2:97 CV 05883
C.A. No. 00-3634

Paul A. Reilly
106 Hillside Avenue
Englishtown, N.J. 07726

RECEIVED
NOV 26 2001
At 8:30 _____M
William T. Walsh, Clerk

Dear Judge Hochberg,

. This letter is written in reference to the November 13, 2001 dated correspondence of Dana Sledge to the defendants' counsel in the above matter. The essence of that correspondence is to provide defendants' counsel the opportunity to submit costs and a form. of order on the mandate.

As I was not asked to reply I wish to make it known to you that I have not waived either my right to object to either issue. Since there are six attorneys there are six potential responses. Therefore, in follow-up to the voice mail message left with Ms. Vash on Friday morning, I would ask that Your Honor allow me to file one document after all defendant's counsel have replied or waived their right to reply. It is my understanding they have 30 days from November 13, 2001 (plus mailing time) in which to reply.

I understand that such a form would be brief but also must accurately reflect any claims the attorneys make as well as the disposition of the appellate court. This would be consistent with past practice in this case. In that instance, Magistrate Chesler

asked one attorney for the defendants to submit a form of order. Upon notice to me and objection the form of order suggested by me was a adopted by Magistrate Chesler.

If the above procedure is satisfactory I will proceed in the above manner. If not please notify me as to the procedure you wish to employ that I may be accordingly heard on these issues.

Thank you for your attention in this matter...

Sincerely,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

CC: Dana Sledge (hand delivery), all counsel of record via regular mail.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Case No. 2:97 CV 05883
C.A. No. 00-3634

Paul A. Reilly
106 Hillside Avenue
Englishtown, N.J. 07726

RECEIVED
DEC 13 2001
At 8:30 _____M
William T. Walsh, Clerk

ORDER ON MANDATE (FSH)

PLAINTIFFS
PAUL A. REILLY, individually and on behalf of his son, Michael Reilly
v.

DEFENDANTS
ALVIN WEISS, PHILIP M, FREEDMAN, RICHARD C. CAMP, ARLENE ALBINO, TOBY KLEINMAN, ILENE MIKLOS, TIMOTHY WELLES, MATHIS HAGOVSKY.

Pursuant to the opinion and mandate of the United States Court of Appeals for the Third Circuit filed in these proceedings on August 10, 1999 in the matter of the orders of this court entered herein on June 16, 1998 and October 7, 1998, and pursuant to the opinion and mandate of the United States Court of Appeals for the Third Circuit filed in these proceedings on November 7, 2001 in the matter of the orders of this court entered herein on July 29,2000, September 26,2000, October 5,2000, and February 9,2001, and pursuant to the October

25,2001 denial of Sur Petition for Rehearing with Suggestion For Rehearing En Banc, it is hereby

ADJUDGED that the organization and sanctioning of New Jersey Family courts by named State Supreme Court judges of the holding of secret sessions since at least 1991 where New Jersey Judges are instructed arid coerced into ignoring and contravening the Due Process Clause, to prejudge the facts, and to effect a predetermined outcome to deprive men and their children of First Amendment Speech and Fourteenth Amendment privacy; And where the Defendant Camp's holding of secret hearings for the taking commingled testimony from named defendants to obtain basis for trial, to tell said defendants things he wants only those defendants to hear, and the agreement to, facilitation of and participation in such conduct by the remaining named defendants at particular dates and times fails to state a cause of action upon which relief can be granted. It is therefore

ORDERED THAT the orders entered June 16, 1998 and October 7, 1998 be and the same is hereby affirmed insofar as it dismisses Paul A. Reilly's complaint against the defendants. And it is further

ORDERED THAT the orders of the District Court are hereby vacated and this matter is remanded to the District Court with instructions that it either allow Paul A. Reilly to obtain counse without prejudice for his minor son, Michael S. Reilly, or that it dismiss the complaint without prejudice to Michael S. Reilly in order to provide him the opportunity to bring the claim in his own right upon reaching majority.

AND IT IS FURTHER ADJUDGED that the issues of fundamental fairness and faud on the court presented subsequent to the first mandate are moot because the case was assigned to Judge Faith S. Hochberg;

AND IT IS-FURTHER ADJUDGED that the District Court has the power to enter its August 4, 1999 order on mandate even though the mandate was not registered until August 10, 1999.

AND IT IS FURTHER ADJUDGED that the Plaintiff Paul A Reilly's Certification filed with the post appeal motion charging all earlier proceedings void and a fraud on the court but informing the court he had not and why he had not filed for Certiorari with the Supreme court, the absence of a judge assigned to the case during the period in question, and the absence of analysis and weighing of factors set forth in the pleadings are not sufficient to show no violation or mitigating circumstances leading to dismissal for the violation of a court order.

AND IT IS FURTHER ADJUDGED that although plaintiff sought a stay in the implementation of Judge Hochberg's Chamber Rule requiring all filings and correspondence include a digital copy in Word Perfect 7.0 or. higher as well as a stay of all pending matters on the merits, including the submission of additional memoranda on the merits, prior to a determination of (1) whether the digital requirement violated named local rules and Constitutional Amendments and (2) whether her Honor was disqualified by the First and Fifth Amendment from hearing the action, her Honor's sua sponte waiver of the requirement after dismissing the case and subsequent rehearing did not require disqualification and the Rule is not unconstitutional because .the it did not prevent plaintiff from filing any papers. .

AND IT IS FURTHER ADJUDGED that ruling on a different cause of action from the one pleaded is valid.

AND IT IS FURTHER ADJUDGED that Judge Hochberg did not decide her disqualification, penalty dismissal, nor the merits with deliberate indifference, willful disregard, or reckless indifference to the facts or the rights of litigant and therefore is not disqualified for bias or the appearance of bias.

AND IT IS FURTHER ADJUDGED THE Third Circuit Court of Appeals has not undermined the Constitution's authority, vested in the Congress and the President, to create and constitute inferior federal courts and provide for the manner of appointment by the use of staff attorneys pursuant to 3rd Cir. IOP 13.1, et. Seq., and if so it is not a manifest injustice.

AND IT IS FURTHER ADJUDGED THE Third Circuit Court of Appeals has not undermined the Constitutional rights of notice and opportunity to be heard by refusing to provide the plaintiff with a copy of the staff attorney's reports prior to judgment.

AND IT IS FURTHER ADJUDGED that the legislation of 3rd Cir. IOP 13.1 et. Seq. by the three judge panel and all active circuit judges is not a Constitutionally disqualifying conflict of interest nor statutory bias or appearance of bias preventing their adjudicating the validity of 3rd Cir. IOP 13.1, et. Seq. .

AND IT IS FURTHER ADJUDGED that the activities of staff attorneys pursuant to said procedure is not a situation which offers the average person as judge the possible temptation not to hold the balance nice clear and true between the court and the litigant and does not offer the possible temptation to forget the burden of proof.

AND IT IS FURTHER ADJUDGED that oral argument in the open court room is not required when the actions involves the fairness of the adjudicator.

AND IT IS FURTHER ADJUDGED that Federal Rule of Civil Procedure 78 is constitutional. It is therefore

ORDERED THAT the orders entered July 29, 2000, September 26, 2000, October 5, 2000, and the February 9,2001 be and the same are hereby affirmed.

Done and ordered this ____day of the month of _____ 200__, with no costs.

Date:

_____

Hon. Faith S. Hochberg, D.C.J.
For the District of New Jersey

28 U.S.C. § 1331. Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States

Source: June 25, 1948, ch. 646, 62 Stat. 930; Pub. L. 85-554, § 1, July 25, 1958, 72 Stat. 415; Pub. L. 94-574; § 2, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 96-486, § 2(a), Dec. 1, 1980, 94 Stat. 2369.

28 U.S.C. § 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Source : June 25, 1948, ch. 646, 63 Stat. 932; Sept. 3, 1954, ch. 1263, § 42, 68 Stat 1241; Pub. L. 85-315, part III, § 121, Sept. 9, 1957, 71 Stat. 637; Pub. L. 96-170, § 2, Dec. 29, 1979, 93 Stat. 1284.

28 U.S.C §. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

SOURCE (June 25, 1948, ch. 646, 62 Stat. 928; Pub. L. 100-352, Sec. 2 (a), (b), June 27,1988,102 Stat. 662.)

28 U.S.C. § 46 Assignment of judges; panels; hearings; quorum

(a) Circuit judges shall sit on the court and its panels in such order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate panels, each consisting of three judges, at least a majority of whom shall be judges of that court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. Such panels shall sit at the times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel to panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may

determine by rule the number of judges, not less than three, who constitute a panel.

(c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges (except that the United States Court of Appeals for the Federal Circuit panels of more than three judges if its rules so provide), unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service, or such number of judges as may be prescribed in accordance with section 6 of Public Law 95-486 (92 Stat. 1633), except that any senior circuit judge of the circuit shall be eligible (1) to participate, at his election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member, or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service.

(d) A majority of the number of judges authorized to constitute a court or panel thereof, as provided in paragraph (c), shall constitute a quorum.

SOURCE June 25, 1948, ct. 646, 62 Stat. 871; Pub. L. 88-176, Sec. 1 (b), Nov. 13, 1963, 77 Stat. 331; Pub. L. 95-486, Sec. 5(a), (b), Oct. 20,1978,92 Stat. 1633; Pub. L. 97-164, title I, Sec. 103, title II, Sec. 205, Apr. 2, 1982, 96 Stat. 25, 53; Pub. L. 104-175, Sec. 6, 1996, 11 0 Stat. 1556.)

28 U.S.C. § 47 Disqualification of trial judge to hear appeal

No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

SOURCE (June 25, 1948, ch. 646, 62 Stat. 872.)

28 US.C. § Sec. 455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;
(ii) Is acting as a lawyer in the proceeding;
(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after

substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

SOURCE (June 25, 1948, ch. 646,62 Stat. 908; Pub. L. 93-512, Sec. 1, Dec. 5, 1974, 88 Stat. 1609; Pub. L. 95-598, title II, Sec. 214 (a), (b), Nov. 6,1978,92 Stat. 2661; Pub. L. *100-702*, title X, Sec. 1007, Nov. 19, 1988, 102 Stat. 4667; Pub. L. 101-650, title III, Sec. 321, Dec. 1, 1990, 104 Stat. 5117.)

Rule 65. Injunctions

(a) PRELIMINARY INJUNCTION.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) TEMPORARY RESTRAINING ORDER; NOTICE; HEARING; DURATION.

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court In writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that

event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) SECURITY. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or of an officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) EMPLOYER AND EMPLOYEE; INTERPLEADER; CONSTITUTIONAL CASES. These rules do not modify any statute of the United States relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or the provisions of Title 28, U.S.C., §2361, relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or Title 28, U.S.C., §2284, relating to actions required by Act of Congress to be heard and determined by a district court of three judges.

(f) COPYRIGHT IMPOUNDMENT. This rule applies to copyright impoundment proceedings.

(As amended Dec. 27,1946, eff. Mar. 19, 1948; Dec. 29,1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Mar. 2,1987, eff. Aug. 1, 1987; Apr. 23, 2001, eff. Dec. 1,2001.)

CHAPTER 13. STAFF ATTORNEYS

Staff attorneys based in Philadelphia work under the supervision of the clerk and chief deputy for the Legal Division. They provide legal research and assistance to the court as directed.

Source: Third Circuit Internal Operating Procedures - July 2002

CHAPTER 13. STAFF ATTORNEYS

13.1 Staff.

Staff attorneys based in Philadelphia work under the supervision of the director of the Staff Attorney's Office **Clerk and the Chief Deputy for the Legal division**

13.2 Duties.

Their duties presently include the following:

(a) Preparation of memoranda of law and fact on the merits, upon request of a circuit judge;

(b) Preparation of memoranda of law and fact and a recommendation as to disposition in appropriate pro se cases;

(c) Screening of an appeals for jurisdictional defects, inviting counsel to offer comments for the panel's consideration, ~~and referring the issue to an SMP standing~~ motions panel or the merits panel;

(d) Processing and monitoring ail pro se matters from the time ~~the litigant expresses a desire to file a notice of appeal in the district court until the case is either disposed of by motion or submitted to a panel of the court for resolution on the merits, including answering all prisoner and pro se mail addressed to the court, corresponding with pro se litigants to ensure compliance~~ with the proper filing and motion practice procedures, and directing entry of appropriate records in the Clerk's Office; and

(e) Assisting in a wide variety of miscellaneous matters, including working in a judge's chambers when assigned by the director of the Staff Attorney's Office.

13.3 Director of the Staff Attorney's Office

The director of the Staff Attorney's Office works closely with the chief judge, the judges, and other officials of the court in continuing to develop a program for appropriate support to the court. The director of the Staff Attorney's Office has primary administrative responsibility for processing death penalty cases in this court.

Source: Proposed Third Circuit Internal Operating Procedures. www.ca3.uscourts.gov. December 2001 – June 2002.

CHAPTER 13. STAFF ATTORNEYS

13.1 Staff.
Staff attorneys based in Philadelphia work under the supervision of the Senior Staff Attorney.

13.2 Duties.
Their duties presently include the following:

(a) Preparation of memoranda of law and fact on the merits, upon request of a circuit judge;

(b) Preparation .of memoranda of law and fact and a recommendation as to disposition in appropriate pro se cases;

(c) Screening of all appeals for jurisdictional defects, inviting counsel to offer comments for the panel's consideration, and referring the issue to an SMP [standing motions panel] or the merits panel;

(d) Processing and monitoring all pro se matters from the time the litigant expresses a desire to file a notice of appeal in the District Court until the cases is either disposed of by motion or submitted to a panel of the court for resolution on the merits, including answering all prisoner in pro se mail addressed to the court, corresponding with pro se litigants to ensure compliance with the proper filing in motion practice procedures, and directing entry of appropriate records in the Clerk's office; and

(e) Assisting in a wide variety of miscellaneous mailers. including working in a judge's chambers when assigned by the Senior Staff Attorney.

13.3 Senior Staff Attorney.
The senior staff attorney works closely with the Chief Judge, the judges, and other officials of the court in continuing to develop a program for appropriate support to the court. The Senior Staff Attorney has primary administrative responsibility for processing death penalty cases in this court.

Source: Third Circuit Internal Operating Procedures - July 2000

COMMISSION ON STRUCTURAL ALTERNATIVES
FOR THE FEDERAL COURTS OF APPEALS

+ + + + +

NEW YORK, NEW YORK

+ + + + +

PUBLIC HEARING

+ + + + +

THURSDAY

APRIL 16, 1998

+ + + + +

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

[144] VICE CHAIR COOPER: Judge Edward Becker, Chief Judge of the United States Court of Appeals for the 3rd Circuit. Judge, thank you so much for being with us today.

JUDGE BECKER: Thank you, Mr. Vice Chairman and Judge Rymer, Executive Director Meador. For the record, let me first identify myself. My name is Edward R. Becker. I have been a Federal Judge for approximately 27 and half years. I was a U.S. District Judge in the Eastern District of Pennsylvania for 11 years. I have been a Judge for the United States Court of Appeals for the 3rd Circuit for over 16 years. I enter on duty as Chief Judge of the 3rd Circuit Court of Appeals on February 1. I have been a member and chairman of the Judicial Conference of the United States Committee on Criminal Law, a member of the board of the Federal Judicial Center, and a member of the Judicial Conference Committee on Long Range Planning. It is that latter role that prompted me on January 26 to write to the Commission in some detail expressing my thought on the Commission's

[145] charter. I felt that because I was so heavily involved in the drafting of the provisions of the long range plan dealing with the structure of the Appellate Courts that I had a duty to give the Commission, for whatever it might be worth, the benefit of my views. I deliberately sent that letter on January 26, that is before February 1, so that it would not come on the stationary of the Chief Judge of the 3rd Circuit. Because in connection with the proposals therein, I speak only for myself and I do not purport to speak for my Court. I will, however, speak for my Court on a number of other matters in which I know that the Commission is interested, namely the manner in which the 3rd Circuit does its business. I will not talk in detail about my letter, which is part of the record, although I will review salient points made.

I would like to begin with a brief description of how Appellate Judges do their work. I do so against the background of much fanfare about how Courts of Appeals can be more efficient and of the need to increase productive capacity in order to meet the workload of the Courts of Appeals.

[146] Now while the work of a Federal Appellate Judge is extremely demanding — I mean, for me it is and has been for 16 years a 7-day-a-week job — the process of doing it is very simple. You get the briefs and the motion papers or what have you and you read them. Then you think about them and you talk to your law clerks about them and you read their bench memos. But you read the briefs and you read the motion papers and then, obviously after the rest of the process is through, you write and you rewrite and you rewrite and of course it is the duty of every Circuit Judge to contribute to keeping up the consistency and coherency of the Circuit law and you read the opinions of the other judges.

But there is one very interesting thing I want to tell you about briefs. I found out long ago that they don't read themselves. You have got to read them yourself. So what are the efficiencies? How can we to cope with this be so much more efficient? Facts? E-mail? The Internet? They don't help you read the briefs. The only efficiency I know of is if you have somebody else read the briefs and tell you

[147] what is in them. And that would be, in my view, an abdication of our duties. It is reported that in certain Circuits, at least within certain kinds of cases, where they have the so-called screening function, the briefs in many cases are reviewed by staff attorneys who then come and report to the judges. We don't do that in the 3rd Circuit. We do not use staff — staff attorneys never look at a counseling case in the 3rd Circuit. They do pro se cases and they play a very important role in pro se cases. But pro se cases are decidedly different from counseling cases. Not that we give them any less attention. We don't. But many of them — the vast majority of them, the statistics show, really have no merit at all. We probably reverse maybe 10 or 15 percent of them, but you really need an interpreter. They are written in longhand and sometimes it is gibberish. And the staff attorneys perform a very important role in presenting them to us in an efficient way so that we can read them. That is not a problem that we have in counseled briefs.

In my view, the efficiency of delegating

[148] or what have you work on counseled cases and having them report to the judges in my view is highly undesirable Professor Hazard wrote in 1965, "It is not difficult to imagine ways in which the Appellate system could be reshaped to handle the present volume of appeals at a much higher rate of speed or to handle a much greater volume of appeals at the present rate of speed. But a it is difficult to imagine how one could organize a judicial establishment that would have this kind of productive capacity and at the same time retain the intimate personal responsibility that is characteristic of the Appellate judicial process today." That was true in 1965 and even though caseload has vastly increased, it is true — I know it is true in my Circuit and I believe in most Circuits today. But I just do not know how we can, in terms of the most critically important duty of Federal Appellate Judges, that is, to listen and read the Briefs and read the papers, how we can be more efficient and how we can delegate that.

In so far as responsibility for the

[149] maintenance of the consistency and coherency of Circuit law, I don't see how you can delegate that. I am going to talk about that a little bit more.

Lately, one of the judges from another Circuit said, well, they have the staff attorneys check this, that, and the other and we have it all on computer. There is no substitute for a judge having in his or her head knowledge of the law of his or her Circuit, and I will tell you how we do that in the 3rd Circuit in a few minutes.

VICE CHAIR COOPER: Judge, let me ask you one question that you have raised really for the first time we have seen in these public hearings. I take from your written paper that you say that maybe the D.C., Federal, and 1st Circuits are too small from an economic point of view looking toward the future. That they don't have the caseload to justify the money that Congress has to put into them. Would you amplify on that a little bit? I mean, what should we do about it since we are supposed to look at everything?

JUDGE BECKER: Well, I think what you have to do is to look at it within the framework — let me

[150] — if I can bridge into that, Mr. Vice Chairman.

VICE CHAIR COOPER: That is fine. Go ahead. Just keep that in mind.

JUDGE BECKER: Yes. I intend to get to that. I just wanted to finish this thought. The only other delegation would be if you relied more heavily on law clerk drafts of opinions, which judges don't want to do. The critically important thing in terms of this delegation is while Appellate commissioners and Appellate magistrates and staff attorneys are capable people, and while mass produced justice would probably be correct 95 percent of the time, these folks are not judges. They are not Article III judges. And if you miss, things fall between the cracks. If you miss 2 or 3 or 5 percent of the cases, that is in my view a very serious matter.

Now to turn directly, Mr. Cooper, to your question, but with some back-up. And I would like to reference the letter that I wrote to the Commission. I basically said that the seminal document with which this Commission should begin is the long range plan of the Federal Courts. The message I draw from that is

[151] that this Commission should not do its work only with its eye on 1998 and what we need now, but with its eye on the future, and the year most recently cited is 2020. If you are familiar with Professor Baker's article, he makes 2020 the judicial equivalent of 1984.

Now I asked, and you have them now –a month or more ago, knowing that I was coming here, I asked the administrative office to update the projections as to the Federal Appellate caseload. Because 2020 looks through the roof — what we in the Long Range Planning Committee call the nightmare scenario. You have, I take it, this document that they produced to me.

VICE CHAIR COOPER: Yes, sir. Yes, sir, I do.

JUDGE BECKER: And although the number of Appellate filings in 1997 exceeded those reported in the previous year by less than 1 percent, and the total Appellate filings projected for 2020 have decreased by approximately 13.4 percent — that is due largely to a decrease in projected prisoner appeals -

[152] the fact of the business is that they still project a threefold increase in filings by 2020. That is a matter of concern. Now my point is that this may counsel certain realignments and the basic principle that I would apply is to have in mind that the Everts Act, which created the Courts of Appeals, was passed in 1891. So leaving aside the split of the 5th Circuit, it has been 106 years since there has been any significant change in the structure of the U.S. Courts of Appeals. And if you make a change every 100 years, I think the Republic will survive.

The Long Range Planning Committee – and your staff aid sitting with you, Dr. Judith McKenna, played a very important role in this enterprise – really thought long and hard about the basic structure of the Federal Appellate Courts. We did not get into Circuit alignment. We didn't deal with that. But we thought about the question of whether there should be specialized courts and we unanimously rejected that. We said that generalists courts where you bring a broad-based view are the best kinds of Appellate Courts. We considered the matter of intermediate

[153] panels. We thought about the idea of an Appellate division of the District Court. We unanimously rejected that. We had retreats. I was the facilitator in retreats that we had all around the country. And by and large, there was no support for an Appellate division of the District Court. The District Judges said they are too busy. And if I may borrow a phrase from Professor Carrington's work, "Appellate Judges should have a reviewer's frame of mind." And District Judges sitting on an Appellate division are not likely to have a reviewer's train of mind.

VICE CHAIR COOPER: Do you think that could be summed up as there would be a fear of the sneer of the peer? It is if you had a fellow District Judge -

JUDGE BECKER: I could not have done that well, Mr. Cooper, and I thought about it for 24 hours.

PROFESSOR MEADOR: Let me ask for a clarification about that. District Judges now constantly review trials through new trial motions, correct?

[154] JUDGE BECKER: Correct.

PROFESSOR MEADOR: So what is the difference between that and what we are talking about, that is, the Appellate division?

JUDGE BECKER: Well, they are reviewing their own work. That is partly what Mr. Cooper said. Here they would be reviewing everybody else's work. I want to say that I think the principle problem is workload. They are just too busy.

PROFESSOR MEADOR: Well, suppose you added District Judges to cover that additional workload?

JUDGE BECKER: Well, if you are going to add — in my view, it doesn't make any sense to add District Judges to do Appellate work. If you need more Appellate Judges, then add more Appellate Judges Don't add District Judges.

PROFESSOR MEADOR: I am not trying to sell this. I am just trying to give you the arguments that are made that it is easier to add District Judges than Appellate Judges because at the Appellate Court you have all of the problems of collegiality and so on and so on, and it is just easier to do it at the District

[155] level.

JUDGE BECKER: Well, then I think you defeat the purpose of having an Appellate Court and having more coherence and consistency in Circuit law. I mean I think if we had no other alternative, Mr. Meador, and if the nightmare scenario of 2020 should eventuate, I think it is a possibility. We also rejected the notion of an inter-Circuit tribunal. The Supreme Court's caseload is down. We met with the - - I was one of the members of the Committee who met with the Chief Justice. There does not appear to be any need in the foreseeable future, even if there would be a few more Circuit splits or a few more Circuits created, for that. We also thought about and rejected the matter of discretionary review. Speaking for myself, if I have got to review a file to decide – the so-called easy case, to decide whether to take it — if it turns out to be an easy case, I would rather decide it. We are better off if we decide it in summary fashion.

Now in terms of the matter of Circuit size, I believe that the most important text is the

[156] Commentary to Recommendation 17, "The principle of each Court of Appeals should consist of a number of judges sufficient to maintain traditional access to and excellence of Federal Appellate justice but preserve judicial collegiality and consistency, coherence, and quality of Circuit precedent to facilitate effect Court administration and governance." And there is some other language about a court being a cohesive group of individuals who are familiar with ways of thinking, reacting, persuading, and being persuaded. Others have stressed that language more. The language that I stress is not so much the collegiality part, but that "the Court becomes an institution, an incorporeal body of precedent tradition, of shared experiences, and collegial feelings in which members possess a common devotion to mastering Circuit law, maintaining its coherence and consistency, thus assuring its predictability and adjudicating cases in like manner."

Now in the 3rd Circuit, we have pre-filing circulation. We read every opinion before it is filed. We comment and we catch a lot of problems and

[157] flag time and again cases which create a problem with existing Circuit law. One matter of 3rd Circuit practice that I know the Commission is interested in and I do want to note is that our judgment order or unreasoned disposition practice. I am pleased to say that we have all but abolished that practice. When I became Chief Judge, we had a retreat and I took it up with my colleagues and judgment orders are for the most part a thing of the past in the 3rd Circuit. But in terms of being able to master Circuit law, I respectfully submit that there is no way that the judges of the 9th Circuit can do what we do. It is just too large and there are too many opinions. I just don't see how any judge of the 9th Circuit, unless he or she has a superhuman brain, can master Circuit law the way we in the 3rd Circuit or judges in other Circuits can master Circuit law. And in my view, whatever else happens, the 9th Circuit consistent with that — I mean, to me that is the hallmark. And if the judges are not in a position to master Circuit law, and I don't mean having a staff attorney or law clerk look it up when the occasion

[158] occurs, then I think that Circuit has to be split. And I think when that principle, which in my view is the cardinal principle governing the size of Courts of Appeals — I submit that the 9th Circuit ought to be split and I suggested in my letter that apparently the only way to do it — unless you — I understand there have been some proposals to create three divisions in the 9th Circuit. To me that doesn't make any sense. If you are going to create three divisions, then create three courts or create two courts. I don't see what the sense of a division is. A court doesn't exist for administrative purposes. To be sure, the Courts of Appeals are also the administrative unit for the District Court, but there are a lot of different ways. I mean, so you administer space and you administer personnel. That doesn't have to be by Circuit. That could be by region. It could be northeast region and southeast region. You can do that. You can do that in a different way.

JUDGE RYMER: Judge Becker, if I may, how do you objectify? What kind of objective measure do you suggest that the Commission consider in deciding

[159] whether a Circuit — a Court of Appeals is too large to master the law of the Circuit or whatever other measure you would like to suggest?

JUDGE BECKER: Well, Judge Rymer, I have used Justice Stuart' s I know it when I see it with respect to the 9th Circuit. I think I would be hard- pressed to come up with objective calipers, but I guess you could do it in terms of basically the numbers — and I haven't tried to do any math, but I guess you could do it in terms of the number of opinions or at least the number of published or precedential opinions that a Circuit has.

JUDGE RYMER: Excuse me, Judge, but by those measures, there are several other Circuit Courts of Appeals that are not far behind.

JUDGE BECKER: Well -

JUDGE RYMER: If that is the pacing item, that is sort of the total number of opinions, then we may be in for a splitting on a fairly large scale basis (indiscernible).

JUDGE BECKER: Let me say that I was not under the impression that that was true, and I have

[160] not made a study of it. I certainly haven't focused on it. I did look in terms of the number of opinions that came out of the 9th Circuit. I have not looked in terms of the number of opinions that have come out of other Circuits. But -

JUDGE RYMER: Well, the 11th and the 5th and the 6th are not massively far behind.

JUDGE BECKER: Are we talking about precedential opinions?

JUDGE RYMER: Well, but isn't that just sort of hail chasing because you can opt yourself for how many published opinions one does and it is perhaps not necessarily good administration of justice (indiscernible).

JUDGE BECKER: Well, the only — I mean, in terms of our practice, and I am not familiar with the practice of other Circuits, the only opinions that we circulate are published opinions –precedential opinions.

JUDGE RYMER: Yes.

JUDGE BECKER: And I would limit it to that. Non-precedential opinions in my view — I mean,

[161] they may be subject to petition for rehearing, and obviously they are the responsibility of the panel, but they are not the responsibility of the full court. So I would measure it by the volume of precedential opinions. And obviously there has got to be some flexibility or leeway.

JUDGE RYMER: Right. If the 9th Circuit were essentially the same number of public opinions as say the 7th Circuit, would you say therefore that the 7th Circuit is too large? Or would you say no because it is divided by fewer judges who sit on the panels more frequently?

JUDGE BECKER: Well, I don't think you divide it by the number of judges because theoretically all the judges are supposed to be familiar with Circuit law — with published opinions. The 7th Circuit, as I am aware, I think publishes a far greater percentage of their opinions, I mean by an awful lot than other Circuits. And I question whether they have to publish everything they publish. Now it is also a much smaller, more cohesive Circuit in terms of geography and personnel, and therefore more of the

[162] judges — it is so much smaller that more of the judges are involved as panel members in more of the cases. And that, I think, dilutes the problem in some respect.

VICE CHAIR COOPER: Do you have an opinion, Judge, as to — I think it was 1980 – why the 5th Circuit Judges felt that it was desirable to split in the 5th and the 11th? I think this morning someone said all but one of the judges supported that, and I think that is historically accurate. Whereas it seems that certainly the majority, and maybe an overwhelming majority, of the 9th Circuit Judges feel differently with a Court that is as large or larger than the 5th Circuit. Do you have any insight into that that you can give us?

JUDGE BECKER: Well, I know there is a tremendous amount of ESPRI and ESPRI and Circuit pride. But I just wonder if they are not letting that get the better of things. The 5th Circuit now – I mean, I know there are a couple of Circuits who don't want their size increased and some of the courts are divided. I do understand the 9th Circuit is not

[163] monolithic on this point.

PROFESSOR MEADOR: Let me go back to back to idea that you mentioned a moment ago that was discussed this morning, and that is the idea of distinguishing between the Circuit and the Court of Appeals and the proposal would be to leave the Circuit intact but have the Court of Appeals sit and function through divisions. I thought I heard you say something to the effect that you didn't know what that would accomplish. The argument made in that direction, as I understand it, is that true you have — when you say three divisions, you have in effect three different Courts of Appeals, but they would all be part of the same Circuit, permitting the Circuit then to maintain uniformity Circuit-wide. Whereas if you split the Circuit, you create separate Circuits with the potential for adding inter-Circuit conflict and the only way to resolve it would be the Supreme Court. So it gives the idea of a regional control over uniformity in the law while permitting the Court to function through smaller units. Do you have any observations about this?

[164] JUDGE BECKER: Well, I mean I think it sort of sounds good, but I still don't see how that is any different — I mean, what you are basically saying is you've still got — you've still got one mega or one jumbo Circuit. Now it could be that there is some improvement by the fact that X number of judges will always sit together and therefore you don't have so many permutations and combinations of panel members, who in Judge Newman's universe would be strangers to each other. There might be an advantage to that. But nonetheless, you still have, from the point of uniformity, a jumbo Circuit.

I mean, I don't know if anybody has got the absolute solution for the 9th. I know it may seem somewhat radical, but on the basis of the figures I have seen, the only way you can do it is to split California. I think that the Republic would survive.

The California Supreme Court now has a certification procedure. If the problem is the northern and southern Circuit predicting what California state law is, you can certify it through the California Supreme Court. There could be an enbanc of the two Circuits.

[165] We believe one of the cardinal principles of long range planning was to have regional Circuits. I don't see that a Circuit that has Alaska and Arizona can in any sense be considered a regional Circuit. Idaho and Montana certainly are much more part of a region of the 10th Circuit. You are looking now at the whipping boy of the Federal Judiciary. I mean, I have managed to get everybody mad at me. I have demonstrated the value of -

VICE CHAIR COOPER: The First Amendment is a great thing, though, Judge.

JUDGE BECKER: Well, not even — what is better is life tenure.

VICE CHAIR COOPER: I see.

JUDGE BECKER: Life tenure is better. I have got my friends in the 1st Circuit mad. My son is a law clerk on the 1st Circuit, so I hear it. I got the 2nd Circuit mad. The D.C. Circuit, I have divided, and I have got them mad and I got the 4th Circuit mad. I don't have any agenda, I assure you. I am just saying if this nightmare scenario eventuates — and that is why I was careful to ask before I came

[166] here to see what the projections are. Then I say the D.C. Circuit is too small, the 1st Circuit is too small. The 1st Circuit arguably should be a New England Circuit.

JUDGE RYMER: Judge Becker, given the nightmare scenario that was projected, do you see, as some have suggested, that there is a real difference in the type of cases that may comprise those numbers? In other words, a good percentage of the nightmare are prisoner pro se cases, for example, which arguably should be handled in a different way from other cases. Do you have any views on that?

JUDGE BECKER: Well, I think — first of all, let me just say that one kind of case that I do not believe shows up in those statistics at all and it is in many respects the most onerous kind of case are the habeas corpus cases which are disposed of, most of them, by denying a certificate of appealability. That is a whole full-dressed habeas corpus case and review of a state record. So I don't think the statistics begin to show how onerous some of the pro se caseload can be. But with respect to most of the civil rights

[167] cases, Judge Rymer, I agree with you. They are much more expeditiously handled. And I do think that you have to discount them and give them a much lower weight. But the projections are frankly a little scary and it is only for that reason that I have said that the D.C. Circuit's caseload is so much smaller. The Federal Circuit to me never made any sense from – I mean, if you want to talk about a political compromise. You have a court that does patents and they do appeals from the Court of Veterans Appeals and then they do federal personnel appeals. The D.C. Circuit does marvelous work, but — and let me just say that notwithstanding my every 100 years comment, I want to make perfectly clear that I am not suggesting that the Commission engage in a redrawing exercise willy nilly. As I said in my letter, I acknowledge the value of long-working institutional arrangements and the importance of the ability of lawyers and judges to rely on precedent. So a strong case has to be made for disrupting Circuit alignment. I say you've got a strong case now in the 9th, as I understand it, and you have a strong case if we are

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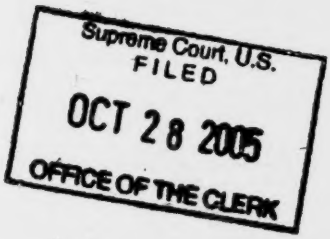

No. 04-1686

In The Supreme Court of the United States

Paul A. Reilly,

Petitioner(s)

v.

Alvin Weiss, Philip M. Freedman, Richard C. Camp, Arlene Albino, Toby Kleinman, Ilene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, James Wulach, and Theresa M. Pagano

Respondent(s)

On Petition for Writ of Certiorari to the Third Circuit Court of Appeals

PETITION FOR REHEARING

Paul A. Reilly, Pro Se
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(973) 945 - 1078

Basis for Petition for Rehearing

The Court is asked to vacate the October 3, 2005 order denying the petition for a writ of certiorari on the grounds of "intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented."

The Court is asked to vacate said order in the interests of Justice; i.e. the injustice to the party, the risk denial will produce further injustice, and the risk of undermining the judicial process.

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Rehearing Appendix - under separate cover (citations are in the format of " I V page no".)

* The facts set forth serve as background and a link to the intervening events which have a substantial impact on the outcome.

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Citation of Orders

The petition for certiorari in this matter was denied on October 3, 2005. I V 3.

Jurisdiction

Application for rehearing of that denial is made on the grounds of "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." Rule 44.2.

Statement of Facts

Staff Attorneys and the Appellate Process

> "The country's 12 regional Federal circuit courts began reorganizing themselves in the 1980's, introducing shortcuts in the way they review appeals to help judges cope with the number of cases * * *. Instead of reviewing every case that comes before them, as Federal law requires, the critics say, the appeals courts are becoming more like the Supreme Court, which has the power to decide which cases it will hear * * *. In one of the most controversial changes, the appeals courts created new staff lawyer positions, permanent employees with the authority to screen and, some critics say, to effectively decide thousands of cases by giving judges brief summaries of recommended decisions * * *. 'It is a two-track system, and the tracks basically get allocated by nonjudges,' said Patricia M. Wald, a judge on the Federal Court of Appeals for the District of Columbia. Glaberson, W., "Caseload Forcing Two-Level System for U.S. Appeals", The New York Times (East Coast Edition), March 14, 1999, pl.1.

Staff Attorneys in the Third Circuit Court of Appeals

In 1998 Third Circuit Chief Judge Becker testified:

> "I will, however speak for my court * * * namely the manner in which the 3rd circuit does its business. . . . I would like to begin with a brief description of how the Appellate judges do their work." 145 T 12-18 (Public Hearing, April 16, 1998, New York, Commission on Structural Alternatives for the Federal Courts of Appeals, Gross, Neil R., Court Reporters and Transcribers, 1323 Road Island Ave., N.W., Washington, D.C. 2005-3701)(I V 143-166).

In counseled cases judges "get the briefs and the motion papers or what have you and you read them." 146 T 6-8. "[I]f you have someone else read the briefs and tell you what is in them * * * that would be, in my view, an abdication of our duties." 146-147 T 16-18. "The most critically important duty of federal appellate judges, that is, to listen and read the briefs and read the papers" cannot be delegated. 148 T 18-21. [I]it is the duty of every circuit judge to contribute to keeping up the consistency and coherency of the Circuit law." 146 T 11 - 14. For these reasons and facts "[w]e don't do that in the Third Circuit. We do not use staff - - staff attorneys never look at a counseling case in the 3rd Circuit. They do pro se cases * * *. "147 T 7-10. Moreover, according to Judge Becker, relying heavily on law clerk drafts of opinions in counseled cases cannot be done because while" appellate commissioners and appellate magistrates and staff attorneys are capable people * * * [t]hey are not Article III judges. And if you miss, things will fall between the cracks. If you miss 2 or 3 or 4 percent cases, that is in my view a very serious matter." 150 T 5-16.

In contrast to that of counseled cases, staff attorneys "do pro se cases" because "you have to discount them and give them a much lower weight" 167 T 3-4. Pro se cases are disregarded because the

judges "really need an interpreter * * * they are written in long hand and sometimes it is gibberish * * * the vast majority of them, the statistics show, really have no merit at all." 147 T 13-19.

"[S]taff attorneys perform a very important role in presenting them to us in an efficient way so that we can read them. II 147 T 18 - 20. The way that staff attorneys present the pro se case is by the" [p] reparation of [an undisclosed] memoranda of law and fact and a recommendation as to disposition * * *." 3d Cir. IOP 13.2(b). Additionally, it is the "duty of every judge to contribute to keeping up the consistency and coherency of the Circuit law * * *." 146 T 4-14. And, by being a master of the circuit law "I don't mean having a staff attorney or law clerk look it up when the occasion occurs." 157 - 158 T 20-1. "In so far as responsibility for the maintenance of the consistency and coherency of Circuit law, I don't see how you can delegate that. * * * There is no substitute for a judge having in his or her head knowledge of the law of his or her circuit * * *." 148-149 T 22-10.

The Supreme Court Certiorari Pool

"In the 1972 Term, Justice Powell urged that the Justices combine their efforts in the screening process by having their clerks work together in one 'cert pool.' The petitions would be divided equally among all the clerks in the pool, and the cert memos prepared by them would be circulated to each of the Justices participating. The Chief Justice and Justices White, Blackmun, Powell, and Rehnquist agreed to join in the cert pool. Justices Douglas, Brennan, Stuart, and Marshall declined to participate. In the present court, only Justice Stevens is not a member of the pool." Schwartz, Bernard, A History of the Supreme Court, Oxford University Press, New York, 1993, pgs. 370- 71.

The Justices afford varying degrees of deference to the cert pool clerk memo.

During the run up to the confirmation hearings for Chief Justice John G. Roberts Jr. the question of whether Chief Justice Roberts

believes the cert pool gives the Supreme Court's law clerks too much power became a matter of public interest.

On August 6, 2005 C-Span re-aired its 1997 broadcast of Judge Roberts talk at Georgetown University Law Center. About 22 minutes into the talk he expressed his concern with the certiorari process because it substitutes law clerks for the Justices as the Court's gatekeeper. rtsp://video.c-span.org/archieve/sc/sc080605.ac.rm.

> "[T]he net result of the pool arrangement is that virtually all the cases that come to the Supreme Court are denied review and disposed of with only one or two law clerks - and no justices - actually reading the briefs. At the same time, for the cases the court does grant, how the single pool clerk chooses to write about the petition can have a significant impact. The cert pool's power is a "little bit disquieting," said nominee Roberts in 1997, because it makes the clerks "a little bit too significant" in the process." "Will Roberts Jump Into Court Cert Pool?" Mauro, T., The Legal Intelligencer (National), August 12, 2005, Vol. 232, No 158, (citing 1977 C-Span Broadcast).

While the Justices make the final decision on what certiorari petitions to grant, the work on the petitions is done by the law clerks. In the vast majority of cases, the Justices' knowledge of the petitions and the issues they present is based on the clerks' cert memos, and they normally follow the recommendations in their memos. Sheer volume, if nothing else, has made this the prevailing practice. Schwartz, Bernard, A History of the Supreme Court, Oxford University Press, New York, 1993, p. 370.

In some instances, however, the law clerk memo is dispositive. The pool clerk's undisclosed summary of fact, law, and recommendation is final when certiorari is denied. First, deference is given to the pool clerk's "word" as fact and law are accepted

as true and thus "it is not necessary to go any further than the pool memo." Rehnquist, William H., The Supreme Court, Revised and Updated, First Vantage Books, U.S.A., 2002, pgs. 333-334. Second, Justice Stevens, the only judge not to participate in the pool, concedes he does "not read 80% of the certiorari petitions presented to the Court. * * * The Justice only reads those where the granting of certiorari is recommended." A History of the Supreme Court, p. 370.

In declining to join the cert pool Justice Douglas wrote to the Chief Justice: "The law clerks are fine. Most of them are sharp and able. But after all, they have never been confirmed by the Senate." Schwartz, p. 371.

The Supreme Court Office of the Clerk

Petition for a writ of certiorari was filed on October 18, 2004 and placed on the docket June 15, 2005 as No. 04-1686. I V 4. Petitioner's unspecified "Motion for Access to the Certiorari Pool Memorandum", I V 34-54, was returned by the Office of the Clerk on June 15, 2005. I V 5. "The Rules of this Court make no provision for filing a motion for access to the certiorari memorandum." Id.

Subsequent conversations with various Clerk personnel forced consideration of further action as "the intensity of [their] opposition to said motion [made] further soul searching appropriate" I V 8. Petitioner was "warned [] it would be 'unwise' to resubmit the motion" but responded he "would make no promises but would think about it." I V 11.

Furthermore; in a call to the Deputy Clerk, the Deputy –

> "not only sounded irritated by the mere fact that I called but lost all control after he asked for and heard a partial summary of the motion's subject. I say partial because Mr. Vasil quickly interrupted with an emotional outburst where he said, in part, that in his twenty three (23) years at the Court no such motion had ever been submitted

and such a motion would not be filed. The conversation ended abruptly when Mr. Vasil, without pause, said there was nothing further to discuss, said goodbye and hung up." I V 12.

"Application / Motion" for leave to file, I V 27, and Motion for access, I V 31, were submitted, but again returned. I V 6. It would appear leave to file was granted as the merits of the original motion are addressed by the Deputy's declaration "[p]ool memoranda are not public documents. Id. However, the declaration lacks specificity, nothing appears on the docket noting their distribution, No. 04-1686, and since all documents are returned no Justice reviewed them.

Clerk Suter was asked to intervene and have the documents filed. I V 10-13. Here too, however, the response did not address the procedure for their submission but addressed the merits. I V 7. Given the Office of the Clerk performs administrative functions and the Justices adjudicative functions, the Clerks response, while appreciated is objected to, I V 14-17, and is challenged in a September 22, 2005 application to Justice Souter. I V 23.
It was not submitted to Justice Souter "for the reasons stated in prior correspondence." I V 3A.

The nonadministrative refusal of the Office of the Clerk to file and present petitioner's Rule 21 motion fulfills the requirements of Rule 44.2 because the refusal to present the motions and applications to the Justices is an intervening circumstance which prevented substantial grounds from being presented. The grounds are substantial for the reason that while the Motion is unspecified Rule 21.2(b) applies to "any motion the granting of which * * * would affect the final judgment to be entered." Rule 21.2(b). Indeed, the refusal of Clerk personnel to file and present the documents concerning the cert pool to the Court is a substantial issue.

Argument

If a person in the Office of the Clerk can rule on substantive matters in the Court's stead and can prevent Justices from reviewing the decision(s) there is no doubt the Office of the Clerk is the

supreme, final judicial authority. "[J]udgment is in legal effect the act of the court recorded ordinarily by the clerk as a ministerial officer of the court." Ex Parte Morgan, 114 U.S. 174, 175 (1885). And, the act of recording is itself subject to judicial control. Id.

The Clerk and staff are not Article III Justices appointed pursuant to Article II. U.S. Const, Art. II, § 2, ¶ 2. The Clerk and deputy Clerks are appointed by the Justices. 28 U.S.C. § 671. Furthermore, the clerk or his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless recited in the order of appointment. 28 U.S.C. § 957.

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court." 28 U.S.C. § 956[1]. The duties and powers assigned are set forth in Rule 1: "The Clerk receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules." Rule 1.

Rule 21 and 22 govern motions and applications generally. Rule 21, 22. These rules address form and procedure. Id. There are other rules that contain special provisions relating to specific motions and applications. Others not specifically covered by a particular rule are likewise governed by Rule 21 and Rule 22. Stern, Robert L., Eugene Gressman, Stephan M. Shapiro and Kenneth S. Geller, Supreme Court Practice, 8th Edition, The Bureau of National Affairs, Inc, Washington, D.C., 2002, p743-744.

To say that the rules do not provide for such a motion is inconsistent with the facts there is a presumption of public access to judicial records under the common law, Nixon v. Warner

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[1] "As used in this chapter, unless the context indicates otherwise, the words 'court' and 'courts' include the Supreme Court of the United States and the court enumerated in section 610 of this title." 28 U.S.C. § 963.

Communications, Inc., 435 U.S. 589, 597 (1978) and "[e]very court has supervisory power over its own records and files * * *." Id. at 598. And, this Court has entertained motions to seal documents, I V 18, and motions for access to documents, I V 20. Indeed, the requests are themselves part of the record. I V 20.

The lack of a decision on the issue of access to the cert pool memo prior to the October 3, 2005 denial of the certiorari petition is a disqualifying circumstance. 28 U.S.C. §§ 455(a)[2] and 455(b).[3] Disqualification is appropriate for the justices who review, or appear to review, the cert pool memo and do not provide for a de novo determination of the pool memo. LaSalle Nat'l Bank v. First Conn. Holding Group, LLC., 287 F.3d 279 (3d Cir. 2002) (Judge disqualified where judicial notice of the contents of conversations between plaintiff's attorney and the district court judge's law clerk was inappropriate; the contents of the conversations were not a

---

[2] Section 455(a) - which requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned - is established when a reasonable person, knowing the relevant facts, would expect that a judge knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 858-862 (1988)

3 It is assumed the Rule of Necessity does not apply because the Court can release the cert pool memo and provide a de novo determination, or it can abandon the cert pool process. 28 U.S.C. § 2071 (Supreme Court Rules shall be consistent with Acts of Congress.) Further, Section 455 (a) provides "a waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification." 28 U.S.C. § 455 (e).

matter of common knowledge or provable from a source of unquestioned accuracy, and the judge was not a party to the conversations.)

> As for the question whether information secured in chambers can be "personal" knowledge: although § 455 is principally concerned with knowledge that is "extrajudicial" in the sense that the judge acquires it outside a courthouse, see Liteky v. United States, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994), the Court rejected the argument that only such information can lead to disqualification. 114 S. Ct. at 1157. The point of distinguishing between "personal knowledge" and knowledge gained in a judicial capacity is that information from the latter source enters the record and may be controverted or tested by the tools of the adversary process. Knowledge received in other ways, which can be neither accurately stated nor fully tested, is "extrajudicial." * * * Off-the-record briefings in chambers, by contrast, leave no trace in the record—and in this case the judge has forbidden any attempt at reconstruction. What information passed to the judge, and how reliable it may have been, are now unknowable. * * * Mandatory disqualification under § 455(b)(1) follows. Edgar v. K.L., 93 F.3d. 256, 259 (7th Cir. 1996), cert. denied, 519 US 1111 (1997).

The order denying the petition for writ of certiorari should be vacated. The interests of justice consider the risk of injustice to the parties, the risk denial will produce injustice in other cases, and the risk of undermining confidence in the judicial process. Liljeberg, 486 U.S. 847.

As a litigant the petitioner has a right to seek court documents. Nixon , 435 U.S. at 597 (1978). Conversely, Clerk personnel have no right to adjudicate the merits or elevate the power of the Clerk above the authority of the Court. Ex Parte Morgan, 114 U.S. 175. Such action demands the Court exercise its supervisory power or lose its authority. Id.

The admission the Circuit Judges read counseled but do not read pro se papers but and relies solely on the staff attorney memo creates a special negative deference which assumes the staff attorney memo is correct. So too reliance on the cert pool memo does, or appears to defer to the cert pool memo which is also endowed with a presumption of truthfulness. The check of one nonparticipating Justice is inadequate because the Justice accepts, or appears to accept, staff recommendations to deny certiorari as dispositive. Thus, the outcome would have a substantial impact on the case.

Finally, the petition for the writ of certiorari is in part based on the Third Circuit's prejudgment bias against pro se litigants and cases. Similarly, matter of whether the Clerk and cert pool exercise too much power and whether the cert pool process is fundamentally fair does not promote confidence in the judiciary. Indeed, in light of the Clerk's refusal to file and present these issues for your adjudication, it only raises the issue in this court.

Conclusion

Accordingly, the Court is asked to vacate the October 13, 2005 order denying the petition for a writ of certiorari, permit the filing of the motion for access to the cert pool memorandum, and making a judgment concerning certiorari in light of its review of the cert pool process.

Respectfully,

Submitted October 28, 2005

Substituted November 4, 2005

Paul A. Reilly, Pro Se
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

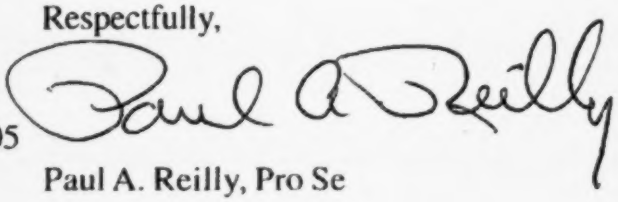
Pro Se Certificate

A pro se petition, I hereby certify that this petition for rehearing is presented in good faith and not for delay and deals with matters arising since the submission of my Petition for a Writ of Certiorari.

Respectfully,

Submitted October 28, 2005

Substituted November 4, 2005



Paul A. Reilly, Pro Se

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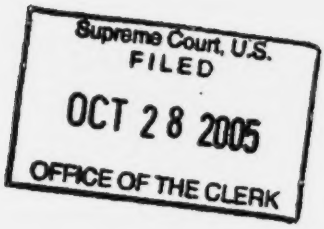

No. 04-1686

In The Supreme Court of the United States

Paul A. Reilly,

Petitioner(s)

v.

Alvin Weiss, Philip M. Freedman, Richard C. Camp, Arlene Albino, Toby Kleinman, Ilene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, James Wulach, and Theresa M. Pagano

Respondent(s)

On Petition for Writ of Certiorari
to the Third Circuit Court of Appeals

REHEARING APPENDIX

Paul A. Reilly, Pro Se
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

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*Page numbers 144-166 , located in the upper left hand transcript page corner follow the page number found in the transcript of the day's hearing prepared by Neal R. Gross, Court Reporters and Transcribers, 1323 Rhode Island Ave., N.W., Washington, D.C. 20005-3701.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

October 3, 2005

William K. Suter
Clerk of the Court
(202) 479-3011

Mr. Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

Re: Paul A. Reilly
v. Alvin Weiss, et al.
No. 04-1686

Dear Mr. Reilly:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
s/ William K. Suter

William K. Suter, Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 23, 2005

Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

RE: Reilly v. Weiss, et al.
No: 04-1686

Dear Mr. Reilly:

The papers pertaining to the above-entitled case received September 23, 2005 herewith returned for the reasons stated in prior correspondence.

Sincerely,
William K. Suter, Clerk

By:
s/ Jeffrey Atkins
Jeffrey Atkins
(202) 479 - 3263

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

June 15, 2005

Mr. Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

Re: Paul A. Reilly
v. Alvin Weiss, et al.
No. 04-1686

Dear Mr. Reilly:

The petition for a writ of certiorari in the above entitled case was filed on October 18, 2004 and placed on the docket June 15, 2005 as No. 04-1686.

Forms are enclosed for notifying opposing counsel that the case was docketed

Sincerely,
William K. Suter, Clerk

by

s/Jeffrey Atkins
Jeffrey Atkins
Case Analyst

Enclosures

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

June 15, 2005

Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

RE: Reilly v. Weiss, et al.
No: 04-1686

Dear Mr. Reilly:

The motion pertaining to the above-entitled case received June 14, 2005 is herewith returned. The Rules of this Court make no provision for filing a motion for access to the certiorari pool memorandum.

Sincerely,
William K. Suter, Clerk
By:
s/Jeffrey Atkins
Jeffrey Atkins
(202) 479 – 3263

Enclosures

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479.3011

July 22, 2005

Mr. Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

Re: Paul A. Reilly
v. Alvin Weiss, et al.
No. 04-1686

Dear Mr. Reilly:

The motion seeking access to the pool memorandum in your case was received July 21, 2005, and is herewith returned. Pool memoranda are not public documents.

Very truly yours,
WILLIAM K. SUTER, Clerk

By
s/Christopher W. Vasil

Christopher W. Vasil
Chief Deputy Clerk

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

William K. Suter
Clerk of the Court
202-473-3014
Fax 202-479-3204

August 18, 2005

Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

Re: Paul A. Reilly v. Alvin Weiss, et al.
No. 04-1686

Dear Mr. Reilly:

This is in response to your letter, dated August 1, 2005, regarding papers that were returned to you from this office on June 15,2005 and July 22,2005.

You were attempting to file a motion seeking access to the pool memorandum. Since pool memoranda are not public documents, the papers were correctly returned to you both times. Based upon my review, I have concluded that no errors were committed by any member of this office in reviewing and returning these documents to you.

Sincerely,

s/William K. Suter

William K. Suter
Clerk of the Court

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Mr. Jeffrey Atkins
C/O Clerk of the Court
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

July 2, 2005

Mr. Chris Vasil
C/O Clerk of the Court
United States Supreme Court
1 First Street, N .E.
Washington, D.C. 20543

RECEIVED
JUL – 6 2005
Office of the Clerk
U.S. Supreme Court

Re: Reilly v. Weiss, et. al.
Docket No. 04-1686

Dear Mr. Jeffrey Atkins and Mr. Chris Vasil,

Enclosed with this original, sent to Mr. Atkins, is a copy and a self addressed and stamped envelop prepared to be sent to me *by* certified mail with return receipt. Please stamp the copy and return it to me in that envelope.

The purpose of this letter concerns our 06/23/05 and 06/28/05 discussions concerning the filing of my motion for access to the cert pool memo.

I continue to believe the motion is proper under the Rules and should be docketed. However, as Mr. Atkins has advised me there is no time constraint on resubmission and given the intensity of your opposition to said motion further soul searching is appropriate. Hence, as Mr. Atkins knows, I will take several more days to try to better

understand your position in deciding and apprising you of whether I will resubmit the motion.

Thank you

s/ Paul A. Reilly
Paul A. Reilly

CC: (w / encls) Solicitor General, all counsel

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Mr. William K. Sutter,
August 1, 2005
Clerk C/O Ms. Lynn Holtz
Assistant/Secretary to the Clerk United States Supreme Court
1 First Street, N.E
Washington, D.C. 20543

Ms. Lynn Holtz
Assistant/Secretary to the Clerk United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

Re: Reilly v. Weiss, et al.
Docket NO. 04-1686

Dear Clerk Suter and Ms. Holtz,

This letter is written as I have been unable to contact Ms. Holtz by telephone (except voice mail identifying myself). Mr. Atkins claims Ms. Holtz referred my call to him. I told Mr. Atkins and noted on Ms. Holtz' voice mail that Mr. Atkins can not help in this matter.

I am contacting you in regard to certain difficulties I am encountering in seeking to file an unspecified motion. The short of the matter is Mr. Vasil and Mr. Atkins are shaping the record and preventing public scrutiny by refusing to docket certain motions and are blocking access to the Court on Constitutional and other matters of substance by refusing to submit the motions to the Court. I know of no authority, and cannot imagine there is any authority, for a clerk exercising such powers. Nevertheless, the

goal of this letter is to introduce these difficulties to the extent necessary to have the papers resubmitted, docketed by your Office and the substantive motion heard by the Court prior to a decision to grant or deny certiorari.

The original motion, certification of service and letter of transmittal were given to Federal Express June 11, 2002 for overnight (next business day) delivery. It argues for and seeks access to the certiorari pool memo in this case prior to a decision to grant or deny certiorari. A number of pages are devoted in fact and law to the cert pool memo being a judicial and hence public document.

Mr. Atkins, in a letter dated June 15, 2005, notes the motion papers are returned. The reason is "[t]he rules of this Court make no provision for the filing ofa motion for access to the certiorari pool memorandum." Since the Rules do not specify, and certainly do not forbid, the unspecified motion, the motion should have been submitted to the Court. It was not.

Immediately following my receipt of the aforesaid letter I spoke with Mr. Atkins and Mr. Vasil. Mr. Adkins repeated the content of his letter. I noted the motion was an unspecified motion containing a jurisdictional statement and that the Court has heard similar requests. Mr. Atkins response had two parts. He stated the motion would only be filed if I could produce an earlier case showing the Court has previously addressed the exact issue at hand. More is said of this below. Mr. Atkins also warned me it would be "unwise" to resubmit the motion. I told him I would make no promises but would think about it.

Everything about my conversation with Mr. Atkins seemed out of character. Mr. Atkins has always been attentive and helpful (and I am grateful to him). But the last conversation, in content

and tone, was surprising. It seemed pressured because it was searching and lacked conviction.

Thus, I called Mr. Christopher Vasil (who I have come to know is the Chief Deputy Clerk). Mr. Vasil not only sounded irritated by the mere fact that I called but lost all control after he asked for and heard a partial summary of the motion's subject. I say partial because Mr. Vasil quickly interrupted with an emotional outburst where he said, in part, that in his twenty three (23) years at the Court no such motion had ever been submitted and such a motion would not be filed. The conversation ended abruptly when Mr. Vasil, without pause, said there was nothing further to discuss, said goodbye and hung up.

The unstamped original and copies of an (1) application/motion to the Court for leave to file, (2) the original motion, (3) certification of service, and (4) letter of transmittal were sent on July 18,2005 and delivered to the 3035 V Street on July 19,2005. All documents were returned with a July 22, 2005 dated letter from Mr. Vasil (copy attached as Page 4). Oddly, the shipping manifest and Fed Ex instructions were cut from the box used for delivery to the Clerk and also returned (copies attached as Page 5).

The letter reads:

"The motion seeking access to the pool memorandum in your case was received July 21, 2005, and is herewith returned. Pool memoranda are not public documents."

The application/motion and original motion were not submitted to an individual justice or the entire Court. Rather, all documents were returned and there are no entries on the docket. Mr. Vasil kept his promise. Yet, it is obvious Mr. Vasil views the application/ motion to file as well as the original motion as appropriate

because he returned all documents for a substantive reason, i.e. "[p]001 memoranda are not public documents." Finally, although the issue appears to be one of first impression, and as the original motion argues, because this Court and other courts have so held, a denial requires specificity not present in Mr. Vasil's letter.

Both the Clerk's Office and OSG have been kept appropriately informed about my concerns with the cert pool. It goes without saying the issue has been brewing for years in both the legal community and the public. So too, it is in my interest that access to certiorari review is proper and the process by which it is reviewed is fundamentally fair. It should not be trivialized.

Therefore, the above acts only add further cause for continuing to seek judicial review of the nature and effect of the certiorari process. Therefore, I am asking your help in the resubmission (it is available in either 6 1/8 x 9 1/4 or 8 1/2 by 11 format), filing and hearing of the substantive motion. I look forward to hearing from you.

Thank you.

Respectfully,
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

CC: Deputy Clerk Christopher W. Vasil, Jeffery Atkins by 2nd day Federal Express, Office of the Solicitor General and all counsel by certified mail.

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Mr. William K. Suter
September 2, 2005

Clerk of the Court
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

Re: Reilly v. Weiss, et al.
Docket No. 04-1686

Dear Clerk Suter,

I am in receipt of the August 18, 2005 dated letter. Thank you for the response.

Regrettably, the letter only serves to produce further action concerning the matter. Accordingly, in the midst of these difficult circumstances, the purposes of this letter are to (1) advise you that the following actions are objected to and are a source of further challenge, (2) evoke necessity to obtain ministerial guidance, and (3) not to seek adjudication by your Office or Office personnel on the merits.

In light of the short response contained in the August 18 letter it is appropriate to reassemble what has transpired before turning to the issues at hand.

In my August 1,2005 dated letter to you I asked for your help in transmitting two unspecified motions (or application) to the Justices

for their judicial determination. The first is substantive, i.e. it seeks access to the cert pool memoranda in this case prior to a decision on certiorari and challenges the process on Constitutional and other grounds. A clerk refused to file the unspecified motion on the ground the rules make no provision for filing it.

The second motion/application asks the Justices to hear the substantive motion, i.e. it challenges the clerk's' refusal to file said motion based on the bare assertion the rules make no provision for filing it. This document was submitted subsequent to an underserved and intolerant telephone outburst by a Deputy Clerk who first declared "pool memoranda are not public documents" and that the motion would not be filed. And indeed, both motions were rejected by said Deputy. As a result you were contacted via the more the detailed August I, 2005 letter. The August I, 2005 letter seeks you help in having the motions filed, not adjudicated.

Given the above facts the August 18, 2005 dated letter is disappointing for a number of reasons.

1. The letter's declaration "pool memoranda are not public documents" assumes the judicial power vested in the Justices by its deciding the substantive merits of the first motion. A decision your Deputy believes is one of first impression.

2. It not only denies access to the Court, it elevates the power of the Office of the Clerk above the power of the Justices by denying access to the Justices for a substantive determination as to whether the pool memorandum are judicial documents subject to Constitutional and common-law presumptions of access and whether the pool process impermissibly violates the Constitution and other laws. It also denies access to the Justices and denies the Justices of their judicial power to review acts and omissions taken by personnel in the Clerk's Office.

3. The inference that arises from the shortness of your letter is that even though all of the above is true the Constitutional crisis said acts and omissions create, i.e. claiming the power of substantive judicial review and elevating that power above the authority of the Supreme Court, this off the record activity should be overlooked because the result, to the passive observer, might be correct [1]. Yet it is because of the temptation to diminish and prejudge such arguments that this Court and statute require specificity for and in so holding that does not exist and, like the Deputy's rejection, is not present in your letter. In sum, it is a disappointment that clerk personnel have embarked on a circular course of action that adjudicates the very matters sought to be presented to the Justices for their determination and then use that adjudication as the basis for denying access to judicial review. And, it is this disappointment which requires further action.

The previous motions (applications) have been submitted with the purpose of a determination prior to a decision on whether or not to grant certiorari. The conference is scheduled for September 26, 2005. Consequently, please advise me as to the format and what must be done in order for it to be heard prior to the Conference. Also, since the above matters have not been addressed, please provide me with a copy of the 1993 Statement of Recusal Policy and any updates.

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[1] Ironically, Meyer, Brown set forth a similar on point argument in the consolidated cases 03-1034, Estate of Kantor, et al. v. Commissioner of Internal Revenue and 03-184, Ballard v. Commissioner of Internal Revenue. Although not reached by the Court in that matter, it acknowledged the arguments to be substantial. Yet, with their open incorporation in the rejected motion they somehow lose their significance.

Clerk personnel may contact me at (973) 945 - 1078 about the above requests. If for some reason I am unable to answer a call, the call is forwarded to a date and time stamped voice mail. Any missed call will be promptly returned.

Thank you.

Respectfully,

s/Paul A. Reilly

Paul A. Reilly, Pro Se

CC: Office of the Solicitor General, Christopher Carey, Leon Piechta, John Patti.

No. 03-6747

IN THE SUPREME COURT OF THE UNITED STATES

M.K.B., PETITIONER

v.

WARDEN
ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE [] CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF IN OPPOSITION
WITH APPENDIX UNDER SEAL

The Solicitor General, on behalf of the respondent, respectfully moves this Court to permit the filing under seal of unredacted copies of the brief in opposition and its appendix. This matter pertains to information that is required to be kept under seal, as further explained in the government's unredacted brief in opposition.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General
Counsel of Record

JANUARY 2004

No. 03-6747

In The
Supreme Court of the United States

M.K.B.,

Petitioner,

v.

Warden, et al.,

Respondent. -

MOTION TO INTERVENE OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS; ABC, INe.; AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION; AMERICAN IMMIGRATION LA WYERS ASSOCIATION; AMERICAN LA WYER MEDIA, INC.; AMERICAN SOCIETY OF NEWSPAPER EDITORS; ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND; ASSOCIATION OF ALTERNATIVE NEWSWEEKLIES; CABLE NEWS NETWORK LP, LLLP (CNN); GANNETT CO., INC.; KNIGHT RIDDER, INC.; HEARST CORP.; MILITARY REPORTERS & EDITORS, INC.; NATIONAL FEDERATION OF PRESS WOMEN; NATIONAL NEWSPAPER ASSOCATION; NATIONAL PRESS CLUB; NEWSPAPER ASSOCIATION OF AMERICA; NEWSPAPER GUILD-CWA;

NEW YORK TIMES CO.; PEOPLE FOR THE AMERICAN WAY FOUNDATION; RADIO-TELEVISION NEWS DIRECTORS ASSOC.; SOCIETY OF PROFESSIONAL JOURNALISTS; and WASHINGTON POST CO.

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Additional Counsel Listed In Signature Block

Docket for 03-6767
Page 1 of 2

No. 03-6747 .
Title: M.K.B., Petitioner
v.
Warden, et al.
Docketed: October 6, 2003

~~Date~~	~~~~~Proceedings and Orders~~~~~~~~~~
Jun 27 2003	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due November 5, 2003)
Oct 6 2003	Motion (03 M I) for leave to file a petition for writ of certiorari under seal with redacted copies for the public record Granted.
Oct 16 2003	Waiver of right of respondents Warden, et al. to respond filed.
Oct 23 2003	DISTRIBUTED for Conference of November 7,2003.
Nov 3 2003	Response Requested. (Due December 3, 2003)
Nov 3 2003	Brief amicus curiae of Reporters Committee for Freedom of the Press filed. (Printed Brief)
Nov 26 2003	Order extending time to file response to petition to and including January 2, 2004.
Jan 2 2004	Motion for leave to intervene filed by Reporters Committee for Freedom of the Press, et. al.
Jan 5 2004	Motion for leave to file brief in opposition under seal filed by respondents Warden, et al.
Jan 14 2004	Response of petitioner to motion of respondent for leave to file brief in opposition with appendix under seal filed.
Jan 14 2004	Motion of petitioner for leave to file reply brief under seal with redacted copies for the public record filed.

Jan 14 2004	Response to.motion for leave to intervene from petitioner M. K. B. filed.
Jan 15 2004	DISTRIBUTED for Conference of February 20; 2004.
Jan 21 2004	Reply brief of Reporters Committee for Freedom of the Press, et al. in support of Motion to Intervene filed. (Distributed)
Feb 23 2004	Motion for leave to intervene filed by Reporters Committee for Freedom of the Press, et. al. DENIED.
Feb 23 2004	Motion for leave to file brief in opposition under seal GRANTED.
Feb 23 2004	Motion of petitioner for leave to file reply brief under seal with file redacted copies for the public record GRANTED.
Feb 23 2004	Petition DENIED.

~~Name~~~~~~~~ ~~~~~~Address~~~~~ ~~Phone~~

Attorneys for Petitioner:

Paul M. Rashkind (305) 536-6900
Assistant Federal Public Defender
150 West Flagler Street, Suite 1500
Miami, FL 33130-1555

Party name: M. K. B.

http://www.supremecourtus.gov/docket/03-6747.htm
6/19/2005

No. 04-1686

In The Supreme Court of the United States

Paul A. Reilly,

Petitioner(s)

v.

Alvin Weiss, Philip M. Freedman, Richard C. Camp, Arlene Albino, Toby Kleinman, Ilene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, James Wulach, and Theresa M. Pagano

Respondent(s)

On Petition for Writ of Certiorari
to the Third Circuit Court of Appeals

APPLICATION TO THE HONORABLE DAVID H. SOUTER ASSOCIATE JUSTICE TO EXERCISE SUPERVISORY POWER OVER THE OFFICE OF THE CLERK WITH INSTRUCTIONS TO FILE UNSPECIFIED SUBSTANTIVE MOTIONS

Paul A. Reilly, Pro Se
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Summary of the Action

Two pre-certiorari decision "submissions"[2] were given to the Clerk for presentation to the Court. The Clerk has refused to submit them for the Court's determination.

The first submission makes the case the certiorari procedure is fatally defective unless the litigants and public have access to the cert pool memorandum prior to the certiorari decision. It argues the addition of the cert pool process into the certiorari procedure offers the average person acting as judge the possible temptation not to hold the balance nice, clear and true. It contends that, in both appearance and fact, law clerks exercise too much judicial power over the analysis and application of fact and law and the exercise of that power is inconsistent with Fundamental Fairness.

The second submission asks the Court to exercise its supervisory power to review the Clerk's refusal to file the first request and to instruct the Clerk to file both documents. Refusal to present both submissions to the Court is objected to because in refusing to present the documents, the Clerk:

(1) assumes the Justices' Article III power to decide substantive issues;

(2) elevates the power of the Clerk above that of the Court by refusing to allow the Court to review, and hence supervise, the Clerk's action(s); and

(3) the unrecorded refusals' abruptness trivializes these matters in the eyes of the passive observer and may allow this conduct to go unnoticed and uncorrected.

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[2]The term is used in this matter to identify the categories of "Motions" and "Applications" as documents which are designed to persuade the Court to take certain action(s).

Summary of the Action 1

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1. The Court's clerks should be instructed to file this and the two earlier submissions because the Court has both the power and history of hearing such motions. 8

2. It is not with a clerks' power to decide whether or not the cert pool memo is a judicial document. Nor is it within their power to decide, by implication, whether or not the cert pool exercises too much judicial power or whether the process is fundamentally fair 9

3. The clerks' refusal to present the petitioner's objection to their refusal to the Justices for review impermissibly elevates the power of the clerk above the power of the Court. 11 11

4. The shortness of the clerks' letters underestimates both the concerns with the cert pool and the gravity of the acts and omissions involved in dismissing those concerns. These acts and omissions cannot go unaddressed. 11

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Exhibits 14
Motion to File BI-B13

Motion for Access to Cert Pool Memorandum C - C23

> "Waiving response displays the proper disdain for a frivolous petition. And it is not the risk one might imagine: A respondent can be sure of an opportunity to file a brief in opposition if the justices surprisingly do find something of interest in the case." Bishop, Timothy S., Opposing Certiorari in the Supreme Court, Mayer, Brown, Rowe & Maw LLP's Appellate.net, July 3, 2005, pg.2 [3] Your brief in opposition should be low key, befitting the trivial issue the petitioner has tried to foist on the Court. A tone of bemusement, of a patient adult dealing with a confused child, is about right." Id. at 8.

The fact that the petitioner is an average person appearing pro se reason cannot be allowed to stand the Constitution on its head. If the Office of the Clerk can rule in your stead and prevent you from reviewing their decisions there is no doubt the Office of the Clerk is the final judicial authority.

Therefore, given the gravity of the issues and the need for supervisory action the only remedy is to instruct the Clerk's Office to file all submission and to decide the matters which they contain.

Conclusion

For all of the foregoing reasons it is respectfully requested the motion and all relief be granted.

Date: September 21, 2005

Respectfully Submitted
s/ Paul A. Reilly
Paul A. Reilly, Pro Se

[3] www.appellate.net/articles/oppcertinsc.asp

No. 04-1686

IN THE SUPREME COURT OF THE UNITED STATES
Reilly, PETITIONER

v.

Weiss, et. al.

ON PETITION FOR WRIT OF CERTIORARI TO THE
THIRD CIRCUIT COURT OF APPEALS

MOTION / APPLICATION FOR LEAVE TO FILE MOTION
FOR ACCESS TO THE CERTIORARI POOL
MEMORANDUM (PRIOR TO CERTIORARI DECISION)

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Petitioner moves this Court to exercise its supervisory power to file and provide a full hearing, including objection and reply, on Petitioner's Motion for Access to the Certiorari Pool Memorandum prior to review of Petitioner's petition for writ of certiorari ("Motion"). "[R]ecording is in legal effect the act of the court, and subject to its judicial control." Ex Parte Morgan, 114 U.S. 174,175 (1885).). "[J]udgment is the act of a court [which is] recorded ordinarily by the clerk as the ministerial officer of the court." Id."

As explained in the Motion, the Court acknowledges the right of public access in many different contexts in its own proceedings. It argues the character of the certiorari pool memorandum, as opposed to the title of the author, is that of a judicial document subject to both Common-law and Constitutional presumptions of right of access,

and claims a First and Fifth Amendment as well as common-law right of access prior to the certiorari decision.

It appears the Motion was not submitted to the Court as the June 15, 2005 letter from the Clerk refuses to file and returns Motion for the reason the "[rules of this Court make no provision for filing [the] motion * * * .(Attached as Exhibit A) [4]. However, since the Rules are silent on the matter they do not preclude it and thereby enable the Court to employ its supervisory power. Bank of Nova Scotia v. United States, 487 U.S. 250, 254 - 255 (1988), ("Federal courts have no more discretion to disregard the Rule's mandate than they do to disregard constitutional or statutory provisions. ").

"Every court has supervisory power over its own records and files * * *." Nixon v. Warner Communications, Inc., 435 U.S. 589, 598 (1978). However, "[t]here is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." Craig v. Harney, 331 U.S. 367, 374 (1947). Judicial proceedings are public property. U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18,27 (1994).

Accordingly, the Court has entertained motions to seal documents from public access, Attached as Exhibit C, as well as for public access to documents. Attached as Exhibit D.

Furthermore, motions concerning access are themselves treated by the Court as a matter of public record. Attached as Exhibit E.

So too, the Court has supervisory power to "control the disposition of causes on its docket with economy of time and effort for itself, for counsel and for litigants. Landis v. North American Co., 299 U.S. 248, 254 (1936) (See attached Exhibits F - K). Yet, "[t]here is no extra-constitutional power to create courts. Ex Parte Bakelite Corp., 279

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[4] The submission of this application/motion at this time is a result of the intense opposition to the Motion. (Attached as Exhibit B).

U.S. 438 (1929). Moreover, "[e]ven a sensible and efficient use of the supervisory power, however, is invalid if it conflicts with constitutional or statutory provisions. A contrary result 'would confer on the judiciary discretionary power to disregard the considered limitations of the law it is charged with enforcing.'" Thomas v. Arn, 474 U.S. 140,148 (1985) (citations omitted).

> "It is manifest it was not left to the legislative power to enact any process which might be devised * * * and cannot be construed as to * * * make any process 'due process of law,' by its mere will. * * * We must examine the constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors." Murray v. Hoboken Land & Imp. Co., 59 U.S. 272, 276 (1885).

"It is the inherent power of every court of justice * * * to correct that which has been wrongfully done by virtue of its own process." Arkadelphia Co. v. St. Louis Southwestern Ry. Co., 249 U.S. 134, 146 (1919). Moreover, since the Court has jurisdiction over the subject; i.e. to hear and decide disputes and questions concerning whether, when, and under what circumstances not to release the cert pool memo to the litigants and public, Nixon, 435 U.S. at 598 ("* * * access has been denied where court files might have become a vehicle for improper purposes."). Therefore, even if it is one of first impression, it also has the obligation to decide the issue, Cohens v. Virginia, 19 U.S. 264, 404 (1821). Accordingly, the Court is

asked that both this application/motion be filed and granted and the Motion for access be filed, heard and decided as is appropriate to the adversarial setting.

Date: July 16, 2005

Respectfully submitted
S/ Paul A. Reilly
Paul A. Reilly, Pro Se

No. 04-1686

In The Supreme Court of the United States

Paul A. Reilly,

Petitioner(s)

v.

Alvin Weiss, Philip M. Freedman, Richard C. Camp, Arlene Albino, Toby Kleinman, liene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, James Wulach, and Theresa M. Pagano

Respondent(s)

On Petition for Writ of Certiorari to the Third Circuit Court of Appeals

MOTION FOR ACCESS TO THE CERTIORARI POOL MEMORANDUM

Paul A. Reilly, Pro Se
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Basis for Motion & Requested Relief

Certain Supreme Court Justices have organized their law clerks into a structure known as the "cert pool". Its function is to prepare a memo reviewing each petition of certiorari and recommending whether to grant or deny the petition. The memo is distributed to the participating Justices. There are no provisions for public access, including the parties, to this memo.

The lack of access raises the question of whether the cert pool memo is a judicial document and as such whether there is a right of public access pursuant to the Common-Law Presumption of Access and the Fifth Amendment of the United States Constitution, or in the alternative, pursuant to the First and FifthAmendments of the United States Constitution.

It is argued below the cert pool memo is a judicial document and that release is necessary to maintain confidence in the institution, comply with fundamental fairness, and assure a required independent judgment. Given these arguments, the purpose of this motion is to ask the Court toprovide access, prior to judgment, to the cert pool memo in this matter.

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CONCLUSION

For all of the aforesaid reasons the motion for access to the cert pool memo should be granted.

Date: 07-16-05

Respectfully submitted,

s/ Paul A. Reilly
Paul A. Reilly, Pro Se

No.

In The Supreme Court of the United States

Paul A. Reilly,

Petitioner(s)

v.

Alvin Weiss, Philip M. Freedman, Richard C. Camp, Arlene Albino, Toby Kleinman, Ilene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, James Wulach, and Theresa M. Pagano

Respondent(s)

On Petition for Writ of Certiorari
to the Third Circuit Court of Appeals

MOTION FOR ACCESS TO THE
CERTIORARI POOL MEMORANDUM

Paul A. Reilly, Pro Se
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Basis for Motion & Requested Relief

Certain Supreme Court Justices have organized their law clerks into a structure known as the "cert pool". The function is to prepare a memo reviewing each petition of certiorari and recommending whether to grant or deny the petition. The memo is distributed to the participating Justices. There are no provisions for public access to this memo.

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Given these arguments, the purpose of this motion is to ask the Court to provide access, prior to judgement, to the cert pool memo in this matter.

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Jurisdiction

Every court has supervisory power over its own records and files. Nixon v. Warner Communications, Inc. 435 U.S. at 589, 598 (1978)

Notification to the Office of Solicitor General

Copies of this motion have been sent to the Office of Solicitor General ("OSG") and the OSG has continuously recieved notice since the inception of matters in the Court. Motion Certification of Service.

Supreme Court Open Access

The common law presumption of access applies to this Court as it is respected by this Court. The Court's docket of pending and decided cases is open to the public. Docket. (1). There is open access to the "Case Distribution Schedule." (2) "Questions Presented ", (3) Merit's briefs (4), oral argument audio transcripts (5) and transcripts of oral argument(6) and opinions and orders.(7). Furthermore, the Court offers the public A Reporter's Guide to Applications Pending Before the Supreme Court of the United States for use in covering pre-hearing applications. (8) .

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[1] www.supremecourtus.gov/docket/docket.html.

[2] www.supremecourtus.gov/casedistribution/casedistributionschedule.html

[3] www.supremecourtus.gov/publicinfo/press/pr_04-05-04.html

[4] www.supremecourtus.gov/publicinfo/press/pr_10-02-03.html

[5] www.supremecourtus.gov/publicinfo/press/pr_04-13-04.html

[6] www.supremecourtus.gov/publicinfo/press/pr_09-28-04.html

[7] www.supremecourtus.gov/opinions/opinions.html

[8] www.supremecourtus.gov/publicinfo/reportersguide.pdf

"All oral arguments are open to the public." A Visitor's Guide to Oral Argument at the Supreme Court of the United States.(9). Visitors are invited to attend. Visitor's Guide to the Supreme Court. (10). Representative of the press are seated in the red benches along the left side of the courtroom. The Court Building (11). "Prior to oral argument, other business of the Court is transacted." (12).

The Cert Pool Memo

"In the 1972 Term, Justice Powell urged that the Justices combine their efforts in the screening process by having their clerks work together in one 'cert pool.' The petitions would be divided equally among all the clerks in the pool, and the cert memos prepared by them would be circulated to each of the Justices participating. The Chief Justice and Justices White, Blackmun, Powell, and Rehnquist agreed to join in the cert pool. Justices Douglas, Brennan, Stuart, and Marshall declined to participate. In the present court, only Justice Stevens is not a member of the pool." Schwartz, Bernard, A History of the Supreme Court, Oxford University Press, New York, 1993, pgs. 370-71.

While the Justices make the final decision on what certiorari petitions to grant, the work on the petitions is done by the law clerks. In the vast majority of cases, the Justices' knowledge of the petitions and the issues they present is based on the clerks'

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[9] www.supremecourtus.gov/visiting visitorsguidetooralargument.pdf, p.2.

[10] www.supremecourtus.gov/visiting/guide-court.pdf, p. 2

[11] www.supremecourtus.gov/about/courtbuilding.pdf, p.2

[12] www.supremecourtus.gov/about/procedures.pdf, p.1

cert memos, and they normally follow the recommendations in their memos. Sheer volume, if nothing else, has made this the prevailing practice. Id. at 371.

> As soon as I am confident that my new law clerks are reliable, I take their word and that of the pool memo writer as to the underlying facts and contentions of the parties in the various petitions, and with a large majority of the petitions it is not necessary to go any further than the pool memo. In cases that seem from the memo perhaps to warrant a vote to grant certiorari, I may ask my law clerk to further check out the issues, and may review the lower court opinion, the petition, and the response myself. Rehnquist, William H., The Supreme Court, Revised and Updated, First Vantage Books, U.S.A., 2002, pp. 333-334.

At an October 27, 1982 public lecture at NYU Law School, "Justice Stevens conceded that he did not read 80 percent of the certiorari petitions presented to the Court. * * * The Justice reads only those where the granting of certiorari is recommended." A History of the Supreme Court, p. 370. The Justices themselves have expressed qualms about this delegation of the screening task. In declining to join the cert pool, Justice Douglas wrote to the Chief Justice: "The law clerks are fine. Most of them are sharp and able. But after all, they have never been confirmed by the Senate." Id. at 371.

Statement of Law

(1) THE JUDICIAL RECORD AND JUDICIAL DOCUMENTS

A document is recognized as a "judicial document" if it "merely sheds light" on the bases for judicial decisions.

In identifying a "judicial record" to which the presumption of access applies, the overarching principle is that such records consist of all "materials on which a court relies in determining the litigants' substantive rights." FTC v. Standard Fin. Mgmt. Corp., 830 F.2d 404, 408 (1st Cir. 1987); see also United States v. El-Sayegh, 131 F.3d 158, 163 (D.C. Cir. 1997) ("what makes a document a judicial record and subjects it to the common law right of access is the role it plays in the adjudicatory process"); Smith v. United States Dist. Court Officers, 203 F.3d 440, 442 (7th Cir. 1999) (it is "a right of access to those records of a proceeding that are filed in court or that, while not filed, are relied upon by a judicial officer in making a ruling or decision. "); Smith v. United States Dist. Court for the S Dist. of Ill., 956 F.2d 647, 650 (7th Cir. 1992) (granting access to memo sent by Clerk of Court to all judges because, inter alia, trial judge specifically stated that he had relied on it in making his decision); Joy v. North, 692 F.2d 880, 894 (2d Cir. 1982); Wash. Legal Found. v. USSC., 89 F.3d 897, 905 (D.C. Cir. 1996); United States v. Martin, 749 F.2d 964,968 (3d Cir. 1984). The common-law right extends even to judicial documents that merely shed light on the bases for judicial decisions. See, e.g., Brown & Williamson v. FTC, 710 F.2d 1165, 1181 (6th Cir. 1983) (noting public interest "in ascertaining what evidence and records the District Court and this Court have relied upon in reaching our decisions"); Joy v. North, 692 F.2d at 894 (requiring that "a report" used in rendering judgment be revealed: "[s]ince it is the basis for the adjudication, only the most compelling reasons can justify the total foreclosure of public and professional

scrutiny. "). Brief for Petitioner, Estate of Kanter, Et. Al. v. Commissioner of Internal Revenue, No. 03-1034, p. 45 (13).

(2) THE COMMON-LAW PRESUMPTION OF ACCESS

There is a presumption of public access to judicial records under the common law. Nixon, 435 U.S. 597. It envisions "a pervasive common-law right to inspect and copy public records and documents, including judicial records and documents." Leucadia, Inc. v. Applied Extrusion Tech., Inc., 998 F.2d 157, 161 (3rd Cir. 1993).

The presumption prohibits the routine and perfunctory closing of judicial records. Miller v. Indiana Hosp., 16 F.3d 549, 551 (3rd Cir. 1994). Where a particularized need for restricting public access to legal memoranda exists, that need can be addressed by the tailoring of appropriate relief." In Re Providence Journal, 293 F.3d 1, 12 (1st Cir 2000); Globe Newspaper Co. v. Pokaski, 868 F.2d 497, 506-507 (1st Cir. 1989).

The party seeking to override the common-law right of access to any part of a judicial record "bears the burden of showing that the material is the kind of information the courts will protect" and "that disclosure will work a clearly defined and serious injury to the party seeking closure. Id. at 551 (citing Publicker Industries v. Cohen, 733 F.2d 1059, 1071 (3rd Cir 1984). Only the most compelling reasons can justify nondisclosure of judicial records that come within the scope of the common law right of access. FTC, 830 F.2d at 410.

"Once the document is deemed to be a judicial document the presumption favoring access attaches to it." United States v. Amodeo, 44 F.3d 141, 146 (2d Cir. 1995).

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[13] http://supreme.lp.findlaw.com/supreme_court/docket/2004/December.html#03-184)

(3) FUNDAMENTAL FAIRNESS

"For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be first notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" Fuentes v. Shevin, 407 U.S. 67, 80 (1972) (citations omitted). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of an action and afford them an opportunity to present their objections." Mullane v. Central Hanover Trust Co., 339 U.S. 206, 314 (1950). "[T]he root requirement of the Due Process Clause is 'that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest.'" Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542 (1985). The hearing must not only be at a meaningful time and in a meaningful manner, Goldberg v. Kelly, 397 U.S. 254, 268 (1970) (citations omitted), but must be tailored to the capacities and circumstances of those who are to be heard. Id. At 268-269. Adequate notice requires disclosure of all issues to be discussed and sufficient time to prepare. Yohn v. Love, 76 F.3d 508, 516 (3rd Cir. 1996).

The due process clause of the Fourteenth Amendment (14) to the United States Constitution guarantees to all parties in litigation the right to know the evidence and contentions advanced against them as well as the perceived facts which inform a judge's

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[14] Procedural due process imposes constraints on governmental decisions within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. Mathews v. Elderidge, 424 U.S. 319, 332 (1976)

decision. That guarantee includes a fair opportunity to meet those proofs, arguments and perceptions of fact. Ledezma v. A. & L. Drywall, 254 N.J. Super. 613, 618 (A.D. 1992) citing Goldberg v. Kelly, 397 U.S. 254, 267-271 (1970).

This Court has said that due process is denied by "every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear and true * * *. [T]o perform its high function in the best way 'justice must satisfy the appearance of justice.'" In Re Murchison, 349 U.S. 133, 137 (1955) (citations omitted). Accordingly, excluding access to " 'documents that are preliminary [or] advisory' " is " 'inapplicable to judicial records * * * [a] court proceeding * * * is in its entirety and by its very nature a matter of legal significance. Indeed, the meaning and legal import of a judicial decision is a function of the record upon which it was rendered.'" United States v. El-Sayegh Hani, 131 F.3d 158, 162 (D.C. Cir. 1997) (citations omitted)

> Unless this principal is observed, the right to a hearing itself becomes meaningless. Of what real worth is the right to present evidence and to argue its significance at a formal hearing, if someone who decides the case may stray at will from the record in reaching his decision? Or consult another's findings of fact or conclusions of law, or recommendations or even hold conferences with him? * * * The hearer's report obviously played a part in the decision in this case. For it to have played a part without having been shown to the appellant clearly violates his right to have the decision based exclusively upon matters in the record, which are known to him, and can consequently be controverted by him. The individual litigant is entitled to be apprised of the materials upon which an agency is acting. He has a right not only to refute but, what in a case like this is usually more important, to supplement, explain, and

give different perspective to the hearer's view of the case. Mazza v. Cavicchia, 15 N.J. 537, 514-15 (S. Ct. N.J. 1954)

When the report giving the hearers digest of the evidence as his findings and recommendations is turned over to the director without coming to the attention of the licensee, doubt may well rise as to whether a true view of the facts have been conveyed to the director's mind. * * * The hearer may have drawn some erroneous conclusion in his report, or he may even have made some factual blunders. Such mistakes are not uncommon in both judicial and administrative hearings; indeed the whole process of judicial review in both fields is designed to guard against them. But if a party has no knowledge of the secret report or access to it, how is he to be protected himself? An unjust decision may very likely be the result were no opportunity is given to those affected to call attention to such mistakes. That is why it is a fundamental principle of all adjudication, judicial and administrative alike, that the mind of the decider should not be swayed by materials which are not communicated to both parties in which they are not given an opportunity to controvert. In the instant case the hearer can be characterized as a 'witness' giving evidence to the judge behind the back of the appellant, who has no way of knowing what has been reported to the judge. . . . [I]t shocks one's sense of fair play on which our fundamental concepts of procedure are based. Mazza, 15 N.J. at 515-16.

(3) THE FIRST AMENDMENT RIGHT OF ACCESS

The Court has recognized a First Amendment right of access to judicial proceedings. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575-78(1980). Although Chief Justice Berger noted that the question of "[w]hether the public has a right to attend trials of civil cases is a question not raised by this case * * *," Id. at 580, n 17., he recognized "that historically both civil and criminal trials have been presumptively open." Ibid.

"[T]the First Amendment embodies more than a commitment to free expression and communicative interchange for their own sakes; it has a structural role to play in securing and fostering our republican system of self-government." Id., 448 U.S. at 587 (Brennan, J, concurring).

Lower courts have extended this right to civil proceedings and records. Publicker Industries v. Cohen, 773 F.2d 1059, 1067-70(3rd Cir. 1984)(Holding that the reasons supporting a First Amendment right of access to criminal proceedings apply with equal force to civil trials and documents). According to Circuit law it is "clear that the public and press possess a First Amendment and a common law right of access to civil proceedings; indeed there is a presumption that these proceedings will be open." Id. at 1071. While the Supreme Court "has not addressed the right to attend civil trials, each court of appeals to examine this question has concluded Richmond Newspapers applies and that a First Amendment right exists. North Jersey Media Group, Inc. v. Ashcroft, 308 F.3d 198, 207, n.3 (3rd Cir. 2002) (citations omitted), cert. den. 538 U.S. 1056 (2003).

Circuit Court cases that implicitly or explicitly recognize a First Amendment right of access include the Republic of the Philippines v. Westinghouse Elec. Corp., 949 F.2d 653, 659 (3d Cir. 1991) ("The First Amendment, independent of the common law, protects the public's right of access to the records of civil proceedings."); Westmoreland v. Columbia Broadcasting System, Inc., 752 F.2d 16, 23 (2d Cir.1984) ("[W]e agree with the Third

Circuit ... that the First Amendment does secure to the public and to the press a right of access to civil proceedings in accordance with the dicta of the Justices in Richmond Newspapers...."), cert. denied, 472 U.S. 1017 (1985); Rushford v. New Yorker Magazine, 846 F.2d 249, 253 (4th Cir. 1988) (pleadings and evidentiary documents should be open); Doe v. Stegall, 653 F.2d 180,185 (5th. Cir. 1981)(Cited Richmond Newspapers as the sole basis for its determination that the First Amendment guarantee of "public scrutiny of judicial proceedings" is implicated by the plaintiffs' failure to disclose their identities in the complaint.); Brown & Williamson Tobacco Corp. v. FTC, 710 F.2d 1165, 1177 (6th Cir. 1983) (implying a First Amendment right of access to court documents), cert. denied, 465 U.S. 1100(1984); In re Continental Illinois Securities Litigation, 732 F.2d 1302 (7th Cir. 1984) ("[W]e agree with the Sixth circuit that the policy reasons for granting public access to criminal proceedings apply to civil cases as well."); Newman v. Graddick, 696 F.2d 796, 801 (11th Cir. 1983)(limiting First Amendment right to civil proceedings arising release, incarceration, and conditions of prisoner confinement)

There are two considerations to determine if the constitutional right of access applies to particular documents. Press-Enterprise Co. v. Superior Court (Press-Enterprise II), 478 U.S. 1,8 (1986) The first consideration is whether materials like the cert pool memo have been open to the public in the past, because a tradition of accessibility implies to favorable judgment of experience. Press-Enterprise II, 478 U.S. at 8. The second consideration is whether public access plays a significant positive role in the functioning of the particular process in question. Id. When these two considerations are met the right of access may only be overcome based on findings that it is essential to preserve higher values and is narrowly tailored to serve that interest. Press-Enterprise Co. v. Superior Court (Press-Enterprise I), 464 U.S.501, 510 (1984).

Tradition is not meant * * * to be construed * * * narrowly. In re Boston Herald, Inc., 321 F.3d 174, 184, (1st Cir. 2003). Thus, given the recent advent of the cert memo "we look * * * to analogous proceedings and documents of the same " type or kind." Id. at 184 citing Rivera- Puig v. Garcia-Rosario, 983 F.2d 311, 323 (1st Cir. 1992) & Press Enterprise II, 478 U.S. at 10-11 (evaluating California pretrial hearings by looking to practices of other states and to other types of hearings, including probable cause hearings in Aron Burr's 1807 trial for treason).

ARGUMENT

Given the function of "The Cert Pool Memo" set forth above, it is clear that the cert memo is a judicial document .The Justices minimally rely on it as the prima facie source of their knowledge of the petitions and the issues they present. A History of the Supreme Court, supra at 371. The author's "word" is taken as to the underlying facts and contentions of the parties. The Supreme Court, supra at 334. Indeed, eighty percent of the petitions are not read. A History of the Supreme Court, supra at 370. Normally, they follow the recommendation of the memo. Id. at 371. Thus the cert pool memo is a "judicial document" because it is relied upon in the making of the decision even if it merely sheds light on it. Brown & Williamson, 710 F.2d at 1181.

> In so far as the task of the auditor is to define and simplify the issues, his function is, in essence, the same as that of pleading. The object of each is to concentrate the controversy upon the questions which should control the result. In Re Peterson, 253 U.S. 300, 310 (1920).

The fact the memo is advisory is of no moment. [E]xcluding access to "'documents that are preliminary [or] advisory' " is "'inapplicable to judicial records * * * [a] court proceeding * * * is in its entirety and by its very nature a matter of legal significance. Indeed, the meaning and legal import of a judicial

decision is a function of the record upon which it was rendered.' "United States v. El-Sayegh Hani, 131 F.3d 158, 162 (D.C. Cir. 1997)(citations omitted). The conclusion that preliminary or advisory documents are judicial documents is further supported by the facts that (1) The District Court Magistrate Judge's findings of fact and law as well as the recommendation(s) for disposition are advisory. United States v. Raddatz, 447 U.S. 667, 683, n.11 (1980) (15). Like the Magistrate, the Administrative Law Judge submits proposed findings and recommendations to the FDIC. Landry v. Federal Deposit Insurance Corp., 204 F.3d 1125, 1143 (D.C. Cir. 2000) (Rudolph, C.J. concurring), cert. den. 531 U.S. 924 (2000).

There is, however, a fundamental difference between the process associated with the magistrate and ALJ reports and the "law clerk's" cert memo. The district Judge is required to make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. Raddatz,, 447 U.S. at 674. This is also true for the ALJ. Landry, 204 F.3d at 1143.

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[15] "In exercising our original jurisdiction under Art. III, we appoint special masters who may be either Art. III judges or members of the Bar; the role of the master is, for these purposes, analogous to that of a magistrate. The master is generally charged to "take such evidence as may be . . . necessary," Nebraska v. Iowa, 379 U.S. 996 (1965), and to "find the facts specially and state separately his conclusions of law thereon." Mississippi v. Louisiana, 346 U.S. 862 (1953). In original cases, as under the Federal Magistrates Act, the master's recommendations are advisory only, yet this Court regularly acts on the basis of the master's report and exceptions thereto." Raddatz, 447 U.S. at 683, n.11.

The above two examples demonstrate fundamental fairness. First, the parties right to know the hearing officer's perceptions of facts, arguments, and contentions prior to judgment, make exceptions to same, and to have a de novo determination of the record by the decisionmaker comports with the guarantees of due process. Mullane, 339 U.S. at 314; Yohn, 76 F.3d at 516; Ledezma 254 N.J. Super. at 618. Second, a de novo determination is the foundation for the exercise of independent judgment by Article III, § 1 judge. Raddatz, 447 U.S. at 673-675. Conversely, "unless this principal is observed, the right to a hearing itself becomes meaningless." Mazza, 15 N.J. at 514.

This Court has said that due process is denied by "every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear and true * * *. [T]o perform its high function in the best way 'justice must satisfy the appearance of justice.'" In Re Murchison, 349 U.S. 133, 137 (1955) (citations omitted). Thus, the short of it is that public access to the cert pool memo does not presume a judge to be biased. Rather, public access checks temptation.

It does so for the reason the Court has held "judicial rulings, apart from surrounding comments or accompanying opinion, almost never constitute a valid basis for a bias or partiality motion." This is because judicial rulings, standing alone, "cannot possibly show reliance upon an extrajudicial source, and can only in the rarest circumstances evidence the degree of favoritism or antagonism required * * * when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal." (16) Liteky v. United States, 510 U.S., 555 (1994). Without access to the memo and the opportunity to

[16] It goes without say the Court is the highest court of the land and there is no appeal. In light of this fact Justice Jackson's words are compelling: "We are not final because we are infallible, but we are infallible only because we are final." Brown v. Allen, 344 U.S. 443, 540 (1953) (Jackson, J., concurring in result)

object the "hearer can be characterized as a 'witness' giving evidence to the judge behind the back of the appellant, who has no way of knowing what has been reported to the judge * * * [I]t shocks one sense of fair play on which our fundamental concepts of procedure are based." Mazza, 15 N.J. at 515-516. It was recognized long ago in a replevin action that:

> "Evidence is to be given in open Court, in the presence of the parties, their attornies, the counsel, and all by-standers, and before the judge and jury; each party having liberty to except to its competency, which exceptions are publickly stated, and, by the judge, are openly and publickly allowed, or disallowed, in the face of the country; which must curb any secret bias or partiality that might arise in his own breast." 3 Blackstone, 372. Buller, 310. W. B. Surviving Partner, & c. v. Latimer, 1788 U.S. LEXIS 579, *25, n.12 (4 U.S. 1) 1788.

The positive function recognized by the Court in Richmond Newspapers is making real the "indispensible attribute" which is to "satisfy the apperance of justice." The Court noted that:

> "Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance. * * * [T]he historical evidence demonstrates conclusively that at the time when our organic laws were adopted, criminal trials both here and in England had long been presumptively open. This is no quirk of history; rather, it has long been recognized as an indispensable attribute of an Anglo-American trial. Both Hale in the 17th century and Blackstone in the 18th saw the importance of

openness to the proper functioning of a trial; it gave assurance that the proceedings were conducted fairly to all concerned, and it discouraged perjury, the misconduct of participants, and decisions based on secret bias or partiality. See, e. g., M. Hale, The History of the Common Law of England 343-345 (6th ed. 1820); 3 W. Blackstone, Commentaries *372-*373." Richmond Newspapers, 448 U.S. at 569 citing 1 J. Bentham, Rationale of Judicial Evidence 524 (1827). "To work effectively, it is important that society's criminal process 'satisfy the appearance of justice' * * * and the appearance of justice can best be provided by allowing people to observe it." Id. at 571-72 (citation omitted).

CONCLUSION

For all of the aforesaid reasons the motion for access to the cert pool memo should be granted.

Date: 06/10/05

Respectfully submitted,
s/Paul A. Reilly

Paul A. Reilly, Pro Se

Article III, Section 1 of the United States Constitution

The judicial Power of the United States shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, received for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

First Amendment of the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment of the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment of the United States Constitution

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

December 21, 2004

Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

RE: Reilly v. Weiss

Dear Mr. Reilly:

The above-entitled petition for writ of certiorari was received December 20, 2004. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was August 21, 2001. Therefore, the petition was due on or before November 19,2001. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.
The petition was submitted on a page size smaller then the required 6 1/8 x 91/4.

Returned in money order 5595 for $300.00.

All copies of your petition and appendix are returned.

Sincerely,
William K. Suter, Clerk
By:
S. Elliott
(202) 479-3025

Enclosures

Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869
(973) 945 -1078

December 28, 2004

Via Federal Express

Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington DC 20543

Dear Clerk of the United States Supreme Court,

This letter is in follow-up to our telephone conversation of December 27, 2004. At that time I announced who I was and I noted that one of the two boxes of documents that I had redelivered to the court on December 20, 2004 had been returned. There was no letter or reason given for the return (today, December 28,2004, I received the second box).

Upon receipt of the first box I called the Clerk's Office at (202) 479 - 3011 and, upon relating the above, was apparently transferred to a case manager. I did not get her name. However, I asked this person why the documents had been returned. From the background sound it seems she was referencing a computer. Her first response was that the documents needed to be delivered by November 19,2004. I explained the documents were due and delivered October 19, 2004. I also explained they had been picked up by the courier on October 18,2004 and delivered to the Court on October 19, 2004, but the Court thought they were postmarked on October 19,2004 and delivered on October 21, 2004. Therefore, they were returned as untimely.

After several calls to the clerk's office the documents were redelivered on December 20, 2004. The December 20, 2004 delivery included the affidavits and exhibits showing the original pickup and delivery conformed to the Court's instructions. After hearing the click of computer keys I was informed the petition for writ of certiorari was apparently out of time because it was scheduled to be delivered in 2001 and a subsequent rehearing on delivery was denied. However, the petition for certiorari deals with different events occurring at and after that time.

I wonder if there might be some confusion with Estate of Kantor, Et AI. v. Commissioner of Internal Revenue, Docket # 03-1034 (and 03-184).

Nevertheless, I was instructed to send one copy and have enclosed one copy of the following documents:

1. A conforming copy of the petition for the writ of certiorari,

2. A copy of the proof of service (see attached Exhibit A) referred to in the Transmittal Letter included in the December 20,2004 delivery. The original and copies of the Proof of Service were sent via overnight Federal Express on December 20, 2004 and the tracking number for the Court is 841680189356 (See Proof of Service).

3. A. copy of (my) petitioner Paul A. Reilly Rule 29.2 Declaration of Filing Pursuant to 28 U.S.C. § 1746.

4. A copy of the Ann E. Johnson Rule 29.2 Declaration of Filing Pursuant to 28 U.S.C. § 1746 (in regard to this declaration I explained that Ms. Johnson is a relative who was present at the house on October 18, 2004 when the messenger came and picked up the documents to be delivered to the Court, the Third Circuit Court of Appeals and the defendants' attorneys on October 19, 2004).

I have also enclosed a copy of this letter and a self-addressed, stamped envelope. Please stamp the copy and return it to me in that envelope.

Thank you.

s/ Paul A. Reilly
Paul A. Reilly, Pro Se

CC (w / encls): All Counsel via regular mail

No. 04-1686
Title: Paul A. Reilly, Petitioner
v.
Alvin Weiss, et al.
Docketed: June 15, 2005
Lower Ct: United States Court of Appeals for the Third Circuit
Case Nos.: (02-1382, 02-2821, 02-3261, 03-1402)
Decision Date: March 10, 2004
Rehearing Denied: July 19, 2004

~~Date~~~	~~~~Proceedings and Orders~~~~~~~~~~~~~~
Oct 18 2004	Petition for a writ of certiorari filed. (Response due July 15, 2005)
Oct 18 2004	Appendix of Paul A. Reilly filed.
Jul 8 2005	Waiver of right of respondent Arlene Albino to respond filed.
Jul 12 2005	Waiver of right of respondents Toby Kleinman, et al. to respond filed.
Jul 22 2005	Waiver of right of respondents Mathias Hagovsky to respond filed
Jul 27 2005	DISTRIBUTED for Conference of September 26, 2005

~~Name~~~~	~~~~~Address~~~~	~~Phone~~~~~~~
Attorneys for Petitioner:		
Paul A. Reilly	153 Park Avenue Randolph, NJ 07869	(973) 945-1078

Party name: Paul A. Reilly

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4211
Party name: Arlene Albino

Christopher James Carey 4 Headquarters Plaza, P.O. Box
1991 (973) 292-1700
Morristown, NJ 07962-1991
Party name: Toby Kleinman, et al.

John A. Patti 20 Commerce Dr Suite 132
(908) 272-4220
Cranford, NJ 07016
Party name: Mathias Hagovsky

http://www.supremecourtus.gov/docket/04-1686.htm
9/1/2005

HAB.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

August 9, 1991

Re: The Pool

Dear Chief:

This supplements my note of August 6 addressing concerns about the increasing size of the Pool. I add that I have benefited from an independent review and annotation by my clerks of all Pool memos circulated to chambers. I understand that this is the practice in some, but not all, of the other chambers. While this independent review entails extra work for my clerks, I feel that it constitutes a brake against errors by Pool memo writers. Moreover, my clerks report that it enhances their understanding of the Court's entire docket and helps make them better Pool memo writers in the process.

Sincerely,

HAB

The Chief Justice

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

August 6, 1991

Re: The Pool

Dear Chief:

For some years now, I, too, have been concerned about the growth of the Pool. It seems that every time a new Justice arrives he almost automatically is assigned to the Pool. So long as there are four or three not in the Pool, there was a brake against errors that might be committed by Pool writers. Now John is the only non-participant.

I am not sure about Tony's suggested alternative, but I agree that the subject is something we ought to talk about at some conference in the near future.

Sincerely,

Harry

The Chief Justice

cc: The Conference

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HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE ANTHONY M. KENNEDY

August 5, 1991

MEMORANDUM TO THE CONFERENCE

For your information I circulate a copy of my memo to the Chief and his reply to me. I assume we will be discussing this subject when we resume our Conference meetings.

Sincerely,

AMK

Enclosures

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

August 2, 1991

Dear Tony:

Your letter of August 1 about the cert pool points out an obvious weakness in it as the number of Justices who participate in it grows. As originally conceived by Lewis Powell, all members of the Court would have participated; but when it actually did get started, there were only five. By a process of accretion it has grown to seven, and as you point out, that number could increase to eight if our new colleague decides to participate.

I have not had time to fully consider whether I agree with your alternative proposal, but we certainly ought to be thinking along these lines. I hope you will circulate your memo to the Conference; feel free to also circulate mine if you think it would be helpful.

Sincerely,

Warren

Justice Kennedy

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE ANTHONY M. KENNEDY

August 1, 1991

Dear Chief,

The cert pool is vital to our operations, and I think the Justice who succeeds Thurgood should be encouraged to participate. That would mean, though, that only John would be reviewing the petitions without the use of a pool memo.

I propose we alter the system so that in each case one pool member does not receive the pool memo but instead performs an independent review of the petition by whatever in-chambers system he or she selects. To insure review isolated from the memo, perhaps the exclusion rotation should be designed so a clerk for the excluded judge has not prepared the memo for that case.

This suggestion would impose a slight additional burden, but the benefit of an alternate form of review within the pool system may justify the extra effort.

If you think this idea or some variant of it has merit, I will be pleased to circulate this memo to the pool members for their comment.

Sincerely,

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Article I, Section 2, Paragraph 2 of the United States Constitution

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Article III, Section I of the United States Constitution

The judicial Power of the United States shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, received for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article III, Section 2 of the United States Constitution

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

First Amendment of the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment of the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment of the United States Constitution

Section, 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall

be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support theConstitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C. § 956. Powers and duties of clerks and deputies
The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

28 U.S.C. § 957. Clerks ineligible for certain offices
A clerk of a court or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.

28 U.S.C. § 963. Courts defined

As used in this chapter, unless the context indicates otherwise, the words "court" and "courts" include the Supreme Court of the United States and the courts enumerated in section 610 of this title.

28 U.S.C. § 671(a) Clerk

The Supreme Court may appoint and fix the compensation of a clerk and one or more deputy clerks. The clerk shall be subject to removal by the Court. Deputy clerks shall be subject to removal by the clerk with the approval of the Court or the Chief Justice of the United States.

28 U.S.C. § 671(c) Clerk

The clerk may appoint and fix the compensation of necessary assistants and messengers with the approval of the Chief Justice of the United States.

28 U.S.C. § 675. Law clerks and secretaries

The Chief Justice of the United States, and the associate justices of the Supreme Court may appoint law clerks and secretaries whose

28 U.S.C. § 2071(a) § 2071. Rule-making power generally

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

28 U.S.C. § 455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
(i) Is a party to the proceeding, or an officer, director, or trustee of a party;
(ii) Is acting as a lawyer in the proceeding;
(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.
(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
(d) For the purposes of this section the following words or phrases shall have the meaning indicated:
(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
(2) the degree of relationship is calculated according to the civil law system;
(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the

judge participates in the management of the fund;
(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.
(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

Supreme Court Rule 1. Clerk

1. The Clerk receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules.

2. The Clerk maintains the Court's records and will not permit any of them to be removed from the Court building except as authorized by the Court. Any document filed with the Clerk and made a part of the Court's records may not thereafter be withdrawn from the official Court files. After the conclusion of proceedings in this Court, original records and documents transmitted to this Court by any other court will be returned to the court from which they were received.

3. Unless the Court or the Chief Justice orders otherwise, the Clerk's office is open from 9 a.m. to 5 p.m., Monday through Friday, except on federal legal holidays listed in 5 U. S. C. § 6103.

Supreme Court Rule 21. Motions to the Court

1. Every motion to the Court shall clearly state its purpose and the facts on which it is based and may present legal argument in support thereof. No separate brief may be filed. A motion should be concise and shall comply with any applicable page limits. Rule 22 governs an application addressed to a single Justice.

2. (a) A motion in any action within the Court's original jurisdiction shall comply with Rule 17.3.

(b)A motion to dismiss as moot (or a suggestion of mootness), a motion for leave to file a brief as amicus curiae, and any motion the granting of which would dispose of the entire case or would affect the final judgment to be entered (other than a motion to docket and dismiss under Rule 18.5 or a motion for voluntary dismissal under Rule 46) shall be prepared as required by Rule 33.1, and 40 copies shall be filed, except that a movant proceeding in forma pauperis under Rule 39, including an inmate of an institution, shall file a motion prepared as required by Rule 33.2, and shall file the number of copies required for a petition by such a person under Rule 12.2. The motion shall be served as required by Rule 29.

(c) Any other motion to the Court shall be prepared as required by Rule 33.2; the moving party shall file an original and 10 copies. The Court subsequently may order the moving party to prepare the motion as required by Rule 33.1; in that event, the party shall file 40 copies.

3. A motion to the Court shall be filed with the Clerk and shall be accompanied by proof of service as required by Rule 29. No motion

may be presented in open Court, other than a motion for admission to the Bar, except when the proceeding to which it refers is being argued. Oral argument on a motion will not be permitted unless the Court so directs.

4. Any response to a motion shall be filed as promptly as possible considering the nature of the relief sought and any asserted need for emergency action, and, in any event, within 10 days of receipt, unless the Court or a Justice, or the Clerk under Rule 30.4, orders otherwise. A response to a motion prepared as required by Rule 33.1, except a response to a motion for leave to file an amicus curiae brief (see Rule 37.5), shall be prepared in the same manner if time permits. In an appropriate case, the Court may act on a motion without waiting for a response.

Supreme Court Rule 22.

Applications to Individual Justices

1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.

2. The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29.

3. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice will be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

4. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is untimely under Rule 30.2, the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial is without prejudice, a renewed application

is not favored. Renewed application is made by a letter to the Clerk, designating the Justice to whom the application is to be directed, and accompanied by 10 copies of the original application and proof of service as required by Rule 29.
5. A Justice to whom an application for a stay or for bail is submitted may refer it to the Court for determination.
6. The Clerk will advise all parties concerned, by appropriately speedy means, of the disposition made of an application.

3rd Cir. IOP, CHAPTER 13: STAFF ATTORNEYS

Staff Attorneys based in Philadelphia work under the supervision of the Clerk and the chief Deputy for the Legal Division. They provide legal research and assistance to the court as directed.

Source: Third Circuit internal operating Procedures - July 2002

3rd Cir. IOP, CHAPTER 13: STAFF ATTORNEYS

13.1 Staff.

Staff attorneys based in Philadelphia work under the supervision of the director of the Staff Attorney's Office **Clerk and the Chief Deputy for the Legal division**

13.2 Duties.

Their duties presently include the following:

(a) Preparation of memoranda of law and fact on the merits, upon request of a circuit judge;

(b) Preparation of memoranda of law and fact and a recommendation as to disposition in appropriate pro se cases;

(c) Screening of an appeals for jurisdictional defects, inviting counsel to offer comments for the panel's consideration, ~~and referring the issue to an SMP standing~~ motions panel or the merits panel;

(d) Processing and monitoring ail pro se matters from the time ~~the litigant expresses a .desire to file a notice of appeal in the district court until the case is either disposed of by motion or submitted to a panel of the court for resolution on the merits, including answering all prisoner and pro se mail addressed to the court, corresponding with pro se litigants to ensure compliance~~ with the proper filing and motion practice procedures, and directing entry of appropriate records in the Clerk's Office; and

(e) Assisting in a wide variety of miscellaneous matters, including working in a judge's chambers when assigned by the director of the Staff Attorney's Office.

13.3 Director of the Staff Attorney's Office

The director of the Staff Attorney's Office works closely with the chief judge, the judges, and other officials of the court in continuing to develop a program for appropriate support to the court. The director of the Staff Attorney's Office has primary administrative responsibility for processing death penalty cases in this court.

Source: Proposed Third Circuit Internal Operating Procedures. www.ca3.uscourts.gov. December 2001 – June 2002.

CHAPTER 13. STAFF ATTORNEYS

13.1 Staff.
Staff attorneys based in Philadelphia work under the supervision of the Senior Staff Attorney.

13.2 Duties.
Their duties presently include the following:

(a) Preparation of memoranda of law and fact on the merits, upon request of a circuit judge;

(b) Preparation .of memoranda of law and fact and a recommendation as to disposition in appropriate pro se cases;

(c) Screening of all appeals for jurisdictional defects, inviting counsel to offer comments for the panel's consideration, and referring the issue to an SMP [standing motions panel] or the merits panel;

(d) Processing and monitoring all pro se matters from the time the litigant expresses a desire to file a notice of appeal in the District Court until the cases is either disposed of by motion or submitted to a panel of the court for resolution on the merits, including answering all prisoner in pro se mail addressed to the court, corresponding with pro se litigants to ensure compliance with the proper filing in motion practice procedures, and directing entry of appropriate records in the Clerk's office; and

(e) Assisting in a wide variety of miscellaneous mailers. including working in a judge's chambers when assigned by the Senior Staff Attorney.

13.3 Senior Staff Attorney.
The senior staff attorney works closely with the Chief Judge, the judges, and other officials of the court in continuing to develop a program for appropriate support to the court. The Senior Staff Attorney has primary administrative responsibility for processing death penalty cases in this court.

Source: Third Circuit Internal Operating Procedures - July 2000

COMMISSION ON STRUCTURAL ALTERNATIVES
FOR THE FEDERAL COURTS OF APPEALS

+ + + + +

NEW YORK, NEW YORK

+ + + + +

PUBLIC HEARING

+ + + + +

THURSDAY

APRIL 16, 1998

+ + + + +

This transcript was produced from tapes provided by the Administrative Office of United States Courts.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., NW.
(202) 234-4433
WASHINGTON, D.C. 20005-3701
(202) 234-4433

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

[144] VICE CHAIR COOPER: Judge Edward Becker, Chief Judge of the United States Court of Appeals for the 3rd Circuit. Judge, thank you so much for being with us today.

JUDGE BECKER: Thank you, Mr. Vice Chairman and Judge Rymer, Executive Director Meador. For the record, let me first identify myself. My name is Edward R. Becker. I have been a Federal Judge for approximately 27 and half years. I was a U.S. District Judge in the Eastern District of Pennsylvania for 11 years. I have been a Judge for the United States Court of Appeals for the 3rd Circuit for over 16 years. I enter on duty as Chief Judge of the 3rd Circuit Court of Appeals on February 1. I have been a member and chairman of the Judicial Conference of the United States Committee on Criminal Law, a member of the board of the Federal Judicial Center, and a member of the Judicial Conference Committee on Long Range Planning. It is that latter role that prompted me on January 26 to write to the Commission in some detail expressing my thought on the Commission's

[145] charter. I felt that because I was so heavily involved in the drafting of the provisions of the long range plan dealing with the structure of the Appellate Courts that I had a duty to give the Commission, for whatever it might be worth, the benefit of my views. I deliberately sent that letter on January 26, that is before February 1, so that it would not come on the stationary of the Chief Judge of the 3rd Circuit. Because in connection with the proposals therein, I speak only for myself and I do not purport to speak for my Court. I will, however, speak for my Court on a number of other matters in which I know that the Commission is interested, namely the manner in which the 3rd Circuit does its business. I will not talk in detail about my letter, which is part of the record, although I will review salient points made.

I would like to begin with a brief description of how Appellate Judges do their work. I do so against the background of much fanfare about how Courts of Appeals can be more efficient and of the need to increase productive capacity in order to meet the workload of the Courts of Appeals.

[146] Now while the work of a Federal Appellate Judge is extremely demanding — I mean, for me it is and has been for 16 years a 7-day-a-week job — the process of doing it is very simple. You get the briefs and the motion papers or what have you and you read them. Then you think about them and you talk to your law clerks about them and you read their bench memos. But you read the briefs and you read the motion papers and then, obviously after the rest of the process is through, you write and you rewrite and you rewrite and of course it is the duty of every Circuit Judge to contribute to keeping up the consistency and coherency of the Circuit law and you read the opinions of the other judges.

But there is one very interesting thing I want to tell you about briefs. I found out long ago that they don't read themselves. You have got to read them yourself. So what are the efficiencies? How can we to cope with this be so much more efficient? Facts? E-mail? The Internet? They don't help you read the briefs. The only efficiency I know of is if you have somebody else read the briefs and tell you

[147] what is in them. And that would be, in my view, an abdication of our duties. It is reported that in certain Circuits, at least within certain kinds of cases, where they have the so-called screening function, the briefs in many cases are reviewed by staff attorneys who then come and report to the judges. We don't do that in the 3rd Circuit. We do not use staff — staff attorneys never look at a counseling case in the 3rd Circuit. They do pro se cases and they play a very important role in pro se cases. But pro se cases are decidedly different from counseling cases. Not that we give them any less attention. We don't. But many of them — the vast majority of them, the statistics show, really have no merit at all. We probably reverse maybe 10 or 15 percent of them, but you really need an interpreter. They are written in longhand and sometimes it is gibberish. And the staff attorneys perform a very important role in presenting them to us in an efficient way so that we can read them. That is not a problem that we have in counseled briefs.

In my view, the efficiency of delegating

[148] or what have you work on counseled cases and having them report to the judges in my view is highly undesirable Professor Hazard wrote in 1965, "It is not difficult to imagine ways in which the Appellate system could be reshaped to handle the present volume of appeals at a much higher rate of speed or to handle a much greater volume of appeals at the present rate of speed. But a it is difficult to imagine how one could organize a judicial establishment that would have this kind of productive capacity and at the same time retain the intimate personal responsibility that is characteristic of the Appellate judicial process today." That was true in 1965 and even though caseload has vastly increased, it is true — I know it is true in my Circuit and I believe in most Circuits today. But I just do not know how we can, in terms of the most critically important duty of Federal Appellate Judges, that is, to listen and read the Briefs and read the papers, how we can be more efficient and how we can delegate that.

In so far as responsibility for the

[149] maintenance of the consistency and coherency of Circuit law, I don't see how you can delegate that. I am going to talk about that a little bit more.

Lately, one of the judges from another Circuit said, well, they have the staff attorneys check this, that, and the other and we have it all on computer. There is no substitute for a judge having in his or her head knowledge of the law of his or her Circuit, and I will tell you how we do that in the 3rd Circuit in a few minutes.

VICE CHAIR COOPER: Judge, let me ask you one question that you have raised really for the first time we have seen in these public hearings. I take from your written paper that you say that maybe the D.C., Federal, and 1st Circuits are too small from an economic point of view looking toward the future. That they don't have the caseload to justify the money that Congress has to put into them. Would you amplify on that a little bit? I mean, what should we do about it since we are supposed to look at everything?

JUDGE BECKER: Well, I think what you have to do is to look at it within the framework — let me

[150] — if I can bridge into that, Mr. Vice Chairman.

VICE CHAIR COOPER: That is fine. Go ahead. Just keep that in mind.

JUDGE BECKER: Yes. I intend to get to that. I just wanted to finish this thought. The only other delegation would be if you relied more heavily on law clerk drafts of opinions, which judges don't want to do. The critically important thing in terms of this delegation is while Appellate commissioners and Appellate magistrates and staff attorneys are capable people, and while mass produced justice would probably be correct 95 percent of the time, these folks are not judges. They are not Article III judges. And if you miss, things fall between the cracks. If you miss 2 or 3 or 5 percent of the cases, that is in my view a very serious matter.

Now to turn directly, Mr. Cooper, to your question, but with some back-up. And I would like to reference the letter that I wrote to the Commission. I basically said that the seminal document with which this Commission should begin is the long range plan of the Federal Courts. The message I draw from that is

[151] that this Commission should not do its work only with its eye on 1998 and what we need now, but with its eye on the future, and the year most recently cited is 2020. If you are familiar with Professor Baker's article, he makes 2020 the judicial equivalent of 1984.

Now I asked, and you have them now –a month or more ago, knowing that I was coming here, I asked the administrative office to update the projections as to the Federal Appellate caseload. Because 2020 looks through the roof — what we in the Long Range Planning Committee call the nightmare scenario. You have, I take it, this document that they produced to me.

VICE CHAIR COOPER: Yes, sir. Yes, sir, I do.

JUDGE BECKER: And although the number of Appellate filings in 1997 exceeded those reported in the previous year by less than 1 percent, and the total Appellate filings projected for 2020 have decreased by approximately 13.4 percent — that is due largely to a decrease in projected prisoner appeals -

[152] the fact of the business is that they still project a threefold increase in filings by 2020. That is a matter of concern. Now my point is that this may counsel certain realignments and the basic principle that I would apply is to have in mind that the Everts Act, which created the Courts of Appeals, was passed in 1891. So leaving aside the split of the 5th Circuit, it has been 106 years since there has been any significant change in the structure of the U.S. Courts of Appeals. And if you make a change every 100 years, I think the Republic will survive.

The Long Range Planning Committee – and your staff aid sitting with you, Dr. Judith McKenna, played a very important role in this enterprise – really thought long and hard about the basic structure of the Federal Appellate Courts. We did not get into Circuit alignment. We didn't deal with that. But we thought about the question of whether there should be specialized courts and we unanimously rejected that. We said that generalists courts where you bring a broad-based view are the best kinds of Appellate Courts. We considered the matter of intermediate

[153] panels. We thought about the idea of an Appellate division of the District Court. We unanimously rejected that. We had retreats. I was the facilitator in retreats that we had all around the country. And by and large, there was no support for an Appellate division of the District Court. The District Judges said they are too busy. And if I may borrow a phrase from Professor Carrington's work, "Appellate Judges should have a reviewer's frame of mind." And District Judges sitting on an Appellate division are not likely to have a reviewer's train of mind.

VICE CHAIR COOPER: Do you think that could be summed up as there would be a fear of the sneer of the peer? It is if you had a fellow District Judge -

JUDGE BECKER: I could not have done that well, Mr. Cooper, and I thought about it for 24 hours.

PROFESSOR MEADOR: Let me ask for a clarification about that. District Judges now constantly review trials through new trial motions, correct?

[154] JUDGE BECKER: Correct.

PROFESSOR MEADOR: So what is the difference between that and what we are talking about, that is, the Appellate division?

JUDGE BECKER: Well, they are reviewing their own work. That is partly what Mr. Cooper said. Here they would be reviewing everybody else's work. I want to say that I think the principle problem is workload. They are just too busy.

PROFESSOR MEADOR: Well, suppose you added District Judges to cover that additional workload?

JUDGE BECKER: Well, if you are going to add — in my view, it doesn't make any sense to add District Judges to do Appellate work. If you need more Appellate Judges, then add more Appellate Judges Don't add District Judges.

PROFESSOR MEADOR: I am not trying to sell this. I am just trying to give you the arguments that are made that it is easier to add District Judges than Appellate Judges because at the Appellate Court you have all of the problems of collegiality and so on and so on, and it is just easier to do it at the District

[155] level.

JUDGE BECKER: Well, then I think you defeat the purpose of having an Appellate Court and having more coherence and consistency in Circuit law. I mean I think if we had no other alternative, Mr. Meador, and if the nightmare scenario of 2020 should eventuate, I think it is a possibility. We also rejected the notion of an inter-Circuit tribunal. The Supreme Court's caseload is down. We met with the - - I was one of the members of the Committee who met with the Chief Justice. There does not appear to be any need in the foreseeable future, even if there would be a few more Circuit splits or a few more Circuits created, for that. We also thought about and rejected the matter of discretionary review. Speaking for myself, if I have got to review a file to decide – the so-called easy case, to decide whether to take it — if it turns out to be an easy case, I would rather decide it. We are better off if we decide it in summary fashion.

Now in terms of the matter of Circuit size, I believe that the most important text is the

[156] Commentary to Recommendation 17, "The principle of each Court of Appeals should consist of a number of judges sufficient to maintain traditional access to and excellence of Federal Appellate justice but preserve judicial collegiality and consistency, coherence, and quality of Circuit precedent to facilitate effect Court administration and governance." And there is some other language about a court being a cohesive group of individuals who are familiar with ways of thinking, reacting, persuading, and being persuaded. Others have stressed that language more. The language that I stress is not so much the collegiality part, but that "the Court becomes an institution, an incorporeal body of precedent tradition, of shared experiences, and collegial feelings in which members possess a common devotion to mastering Circuit law, maintaining its coherence and consistency, thus assuring its predictability and adjudicating cases in like manner."

Now in the 3rd Circuit, we have pre-filing circulation. We read every opinion before it is filed. We comment and we catch a lot of problems and

[157] flag time and again cases which create a problem with existing Circuit law. One matter of 3rd Circuit practice that I know the Commission is interested in and I do want to note is that our judgment order or unreasoned disposition practice. I am pleased to say that we have all but abolished that practice. When I became Chief Judge, we had a retreat and I took it up with my colleagues and judgment orders are for the most part a thing of the past in the 3rd Circuit. But in terms of being able to master Circuit law, I respectfully submit that there is no way that the judges of the 9th Circuit can do what we do. It is just too large and there are too many opinions. I just don't see how any judge of the 9th Circuit, unless he or she has a superhuman brain, can master Circuit law the way we in the 3rd Circuit or judges in other Circuits can master Circuit law. And in my view, whatever else happens, the 9th Circuit consistent with that — I mean, to me that is the hallmark. And if the judges are not in a position to master Circuit law, and I don't mean having a staff attorney or law clerk look it up when the occasion

[158] occurs, then I think that Circuit has to be split. And I think when that principle, which in my view is the cardinal principle governing the size of Courts of Appeals — I submit that the 9th Circuit ought to be split and I suggested in my letter that apparently the only way to do it — unless you — I understand there have been some proposals to create three divisions in the 9th Circuit. To me that doesn't make any sense. If you are going to create three divisions, then create three courts or create two courts. I don't see what the sense of a division is. A court doesn't exist for administrative purposes. To be sure, the Courts of Appeals are also the administrative unit for the District Court, but there are a lot of different ways. I mean, so you administer space and you administer personnel. That doesn't have to be by Circuit. That could be by region. It could be northeast region and southeast region. You can do that. You can do that in a different way.

JUDGE RYMER: Judge Becker, if I may, how do you objectify? What kind of objective measure do you suggest that the Commission consider in deciding

[159] whether a Circuit — a Court of Appeals is too large to master the law of the Circuit or whatever other measure you would like to suggest?

JUDGE BECKER: Well, Judge Rymer, I have used Justice Stuart' s I know it when I see it with respect to the 9th Circuit. I think I would be hard- pressed to come up with objective calipers, but I guess you could do it in terms of basically the numbers — and I haven't tried to do any math, but I guess you could do it in terms of the number of opinions or at least the number of published or precedential opinions that a Circuit has.

JUDGE RYMER: Excuse me, Judge, but by those measures, there are several other Circuit Courts of Appeals that are not far behind.

JUDGE BECKER: Well -

JUDGE RYMER: If that is the pacing item, that is sort of the total number of opinions, then we may be in for a splitting on a fairly large scale basis (indiscernible).

JUDGE BECKER: Let me say that I was not under the impression that that was true, and I have

[160] not made a study of it. I certainly haven't focused on it. I did look in terms of the number of opinions that came out of the 9th Circuit. I have not looked in terms of the number of opinions that have come out of other Circuits. But -

JUDGE RYMER: Well, the 11th and the 5th and the 6th are not massively far behind.

JUDGE BECKER: Are we talking about precedential opinions?

JUDGE RYMER: Well, but isn't that just sort of hail chasing because you can opt yourself for how many published opinions one does and it is perhaps not necessarily good administration of justice (indiscernible).

JUDGE BECKER: Well, the only — I mean, in terms of our practice, and I am not familiar with the practice of other Circuits, the only opinions that we circulate are published opinions –precedential opinions.

JUDGE RYMER: Yes.

JUDGE BECKER: And I would limit it to that. Non-precedential opinions in my view — I mean,

[161] they may be subject to petition for rehearing, and obviously they are the responsibility of the panel, but they are not the responsibility of the full court. So I would measure it by the volume of precedential opinions. And obviously there has got to be some flexibility or leeway.

JUDGE RYMER: Right. If the 9th Circuit were essentially the same number of public opinions as say the 7th Circuit, would you say therefore that the 7th Circuit is too large? Or would you say no because it is divided by fewer judges who sit on the panels more frequently?

JUDGE BECKER: Well, I don't think you divide it by the number of judges because theoretically all the judges are supposed to be familiar with Circuit law — with published opinions. The 7th Circuit, as I am aware, I think publishes a far greater percentage of their opinions, I mean by an awful lot than other Circuits. And I question whether they have to publish everything they publish. Now it is also a much smaller, more cohesive Circuit in terms of geography and personnel, and therefore more of the

[162] judges — it is so much smaller that more of the judges are involved as panel members in more of the cases. And that, I think, dilutes the problem in some respect.

VICE CHAIR COOPER: Do you have an opinion, Judge, as to — I think it was 1980 – why the 5th Circuit Judges felt that it was desirable to split in the 5th and the 11th? I think this morning someone said all but one of the judges supported that, and I think that is historically accurate. Whereas it seems that certainly the majority, and maybe an overwhelming majority, of the 9th Circuit Judges feel differently with a Court that is as large or larger than the 5th Circuit. Do you have any insight into that that you can give us?

JUDGE BECKER: Well, I know there is a tremendous amount of ESPRI and ESPRI and Circuit pride. But I just wonder if they are not letting that get the better of things. The 5th Circuit now – I mean, I know there are a couple of Circuits who don't want their size increased and some of the courts are divided. I do understand the 9th Circuit is not

[163] monolithic on this point.

PROFESSOR MEADOR: Let me go back to back to idea that you mentioned a moment ago that was discussed this morning, and that is the idea of distinguishing between the Circuit and the Court of Appeals and the proposal would be to leave the Circuit intact but have the Court of Appeals sit and function through divisions. I thought I heard you say something to the effect that you didn't know what that would accomplish. The argument made in that direction, as I understand it, is that true you have — when you say three divisions, you have in effect three different Courts of Appeals, but they would all be part of the same Circuit, permitting the Circuit then to maintain uniformity Circuit-wide. Whereas if you split the Circuit, you create separate Circuits with the potential for adding inter-Circuit conflict and the only way to resolve it would be the Supreme Court. So it gives the idea of a regional control over uniformity in the law while permitting the Court to function through smaller units. Do you have any observations about this?

[164] JUDGE BECKER: Well, I mean I think it sort of sounds good, but I still don't see how that is any different — I mean, what you are basically saying is you've still got — you've still got one mega or one jumbo Circuit. Now it could be that there is some improvement by the fact that X number of judges will always sit together and therefore you don't have so many permutations and combinations of panel members, who in Judge Newman's universe would be strangers to each other. There might be an advantage to that. But nonetheless, you still have, from the point of uniformity, a jumbo Circuit.

I mean, I don't know if anybody has got the absolute solution for the 9th. I know it may seem somewhat radical, but on the basis of the figures I have seen, the only way you can do it is to split California. I think that the Republic would survive.

The California Supreme Court now has a certification procedure. If the problem is the northern and southern Circuit predicting what California state law is, you can certify it through the California Supreme Court. There could be an enbanc of the two Circuits.

[165] We believe one of the cardinal principles of long range planning was to have regional Circuits. I don't see that a Circuit that has Alaska and Arizona can in any sense be considered a regional Circuit. Idaho and Montana certainly are much more part of a region of the 10th Circuit. You are looking now at the whipping boy of the Federal Judiciary. I mean, I have managed to get everybody mad at me. I have demonstrated the value of -

VICE CHAIR COOPER: The First Amendment is a great thing, though, Judge.

JUDGE BECKER: Well, not even — what is better is life tenure.

VICE CHAIR COOPER: I see.

JUDGE BECKER: Life tenure is better. I have got my friends in the 1st Circuit mad. My son is a law clerk on the 1st Circuit, so I hear it. I got the 2nd Circuit mad. The D.C. Circuit, I have divided, and I have got them mad and I got the 4th Circuit mad. I don't have any agenda, I assure you. I am just saying if this nightmare scenario eventuates — and that is why I was careful to ask before I came

[166] here to see what the projections are. Then I say the D.C. Circuit is too small, the 1st Circuit is too small. The 1st Circuit arguably should be a New England Circuit.

JUDGE RYMER: Judge Becker, given the nightmare scenario that was projected, do you see, as some have suggested, that there is a real difference in the type of cases that may comprise those numbers? In other words, a good percentage of the nightmare are prisoner pro se cases, for example, which arguably should be handled in a different way from other cases. Do you have any views on that?

JUDGE BECKER: Well, I think — first of all, let me just say that one kind of case that I do not believe shows up in those statistics at all and it is in many respects the most onerous kind of case are the habeas corpus cases which are disposed of, most of them, by denying a certificate of appealability. That is a whole full-dressed habeas corpus case and review of a state record. So I don't think the statistics begin to show how onerous some of the pro se caseload can be. But with respect to most of the civil rights

[167] cases, Judge Ryner. I agree with you. They are much more expeditiously handled. And I do think that you have to discount them and give them a much lower weight. But the projections are frankly a little scary and it is only for that reason that I have said that the D.C. Circuit's caseload is so much smaller. The Federal Circuit to me never made any sense from – I mean, if you want to talk about a political compromise. You have a court that does patents and they do appeals from the Court of Veterans Appeals and then they do federal personnel appeals. The D.C. Circuit does marvelous work, but — and let me just say that notwithstanding my every 100 years comment, I want to make perfectly clear that I am not suggesting that the Commission engage in a redrawing exercise willy nilly. As I said in my letter, I acknowledge the value of long-working institutional arrangements and the importance of the ability of lawyers and judges to rely on precedent. So a strong case has to be made for disrupting Circuit alignment. I say you've got a strong case now in the 9th, as I understand it, and you have a strong case if we are